

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOUGLAS JENDRAS,

Plaintiff,

-against-

CASE NO. 11
Civ. 5409 (KMK)

ABOVENET, INC.,

Defendant.

-----X

One North Broadway
White Plains, New York
April 2, 2012
10:15 a.m.

DEPOSITION OF WILLIAM LaPERCH

*** CONDENSED TRANSCRIPT ***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOUGLAS JENDRAS,

Plaintiff,

-against-

AGOVENET, INC.,

Defendant.

CASE NO. 12
Cv. 1409 (RAX)

One North Broadway
White Plains, New York
April 2, 2012
10:15 A.M.

DEPOSITION OF WILLIAM LAPORTE, a witness
on behalf of the Defendant in the above-captioned
matter, held pursuant to Notice at the above
time and place, before a Notary Public of the
State of New York.

Donna Buchheim,
Shorthand Reporter

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IT IS HEREBY STIPULATED AND AGREED,
by and between the attorneys for the respective
parties hereto, that the reading and filing of
the within deposition be waived; that such
deposition may be signed and sworn to before any
officer authorized to administer an oath with
the same force and effect as if signed and sworn
to before a Justice of this Court.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to form, are
reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED
that the within examination and any corrections
thereto may be signed before any Notary Public
with the same force and effect as if signed and
sworn to before this Court.

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APPENDICES:

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ALSO PRESENT: Douglas Jendras, Plaintiff

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WILLIAM LAPORTE,
having been duly sworn by, Donna Buchheim,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

odo

EXAMINATION BY MR. WEINSTEIN:

Q. State your name and professional
address for the record, please.

A. William LaPorte, 160 Hamilton Avenue,
7th Floor, White Plains, New York 10601.

Q. Good morning, Mr. LaPorte. My name
is Fred Weinstein. I represent Douglas Jendras,
who's the plaintiff in an action pending in the
United States District Court for the Southern
District of New York, against Agovenet, and I'm
going to be asking you some questions today relating
to the pending case.

And in order to ensure that we get as
accurate a record as possible, I'm going to ask you
to observe a couple of ground rules here. One is,
you'll see we have a court reporter here, who is

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William LaPerch

1 taking down everything I'm saying as I'm saying it,
 2 and she will be taking down your answers in response
 3 to the questions I'm going to ask you. So, in order
 4 to ensure that she's able to record what I'm asking
 5 you and what you're going to say in response to
 6 those questions, it's important that you wait until
 7 I finish the question before you answer, and that
 8 way she'll be able to distinguish between the two
 9 of us. We can't speak at the same time. And it
 10 will also allow your attorney, if he feels it's
 11 appropriate, to make an objection if he feels one
 12 is warranted.

13 Second, I'm going to ask you -- again,
 14 because she can only transcribe what it is we say,
 15 that you keep in mind -- as it's very natural as
 16 you're doing now, to nod -- not to nod, but to
 17 answer verbally so she can, again, record an answer.

18 If at any point in time you don't
 19 understand a question, please let me know that;
 20 I'll try and rephrase it. Otherwise, I'm assuming
 21 you understand it.

22 If you ever want to take a break for
 23 any reason, I have absolutely no problem with that.
 24 The only thing that I'm going to request is that if

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William LaPerch

1 I've already asked a question, that you answer that
 2 question.

3 Do you understand that, sir?

4 A. Yes, I do.

5 Q. Have you ever been deposed before today?

6 A. Yes, I have.

7 Q. On how many occasions?

8 A. Three.

9 Q. And can you tell me what those
 10 occasions were?

11 A. SEC investigations.

12 Q. And when did those SEC investigations
 13 take place?

14 A. I don't remember exactly. Approximately
 15 the 2004 to '06 time frame.

16 Q. And were those investigations related
 17 to anything you did, or was it related to the
 18 company?

19 A. It was related to the company.

20 Q. And other than the SEC investigations --
 21 withdrawn.

22 Were those SEC proceedings pending in a
 23 court, to the best of your knowledge?

24 A. I'm not sure. I think they were

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William LaPerch

1 arbitration, but I'm not sure.

2 Q. Have you ever been deposed in
 3 connection with a pending lawsuit?

4 A. I don't know. It was an SEC
 5 investigation brought forth by some plaintiffs
 6 against the prior company. I don't know if that's
 7 considered a lawsuit or not.

8 Q. Okay. So, when you -- the only
 9 depositions you've ever been a witness at, with the
 10 ones that you've identified as taking place in
 11 connection with these SEC investigations, is that
 12 correct?

13 A. That's correct.

14 Q. And prior to your deposition today, did
 15 you review any documents?

16 A. Yes, I did.

17 Q. And can you tell me what those documents
 18 were that you reviewed?

19 A. On Friday, we, in preparation for the
 20 deposition, reviewed documents that were brought
 21 forth by counsel that -- that had to do with this
 22 matter. Mostly, emails between and among myself, and
 23 Rajiv Datta and Doug.

24 Q. And other than the emails, what other
 25 documents did you review?

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William LaPerch

1 documents did you review?

2 A. None.

3 Q. Did you review any notes that you took
 4 at any time relating to this matter?

5 A. No.

6 Q. The emails that you did look at, were
 7 they provided to you by counsel, or did you have
 8 them in your own file related to this matter?

9 A. Provided to me by counsel.

10 Q. Were they exhibits that were marked at
 11 the prior depositions?

12 A. I don't know.

13 Q. And do you recall, as you're sitting
 14 here today, what the substance of those emails were
 15 that you've identified?

16 A. Yes.

17 Q. What was the substance of those emails?

18 A. It was -- it was some emails between
 19 Rajiv and Doug, outlining some agreements that were
 20 supposedly put in place on Doug's telecommuting
 21 arrangement, as well as some clues on Doug's request
 22 to be separated from the company and to elude a
 23 package of stock and options. Just stock. Withdraw
 24 "options."

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1 of 90 sheets

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William LaPerch

Q. And those were the emails that you
rel all looking at on Friday; is that right?

A. That's correct.

Q. Had you seen those emails before Friday?

A. Ho.

Q. So, the first time you had ever seen
those emails displaying the telecommuting arrangement
as between Aajju and Doug was on Friday; is that
correct, sir?

A. The first time I saw the emails that
were presented me on Friday, was Friday, yes.

Q. And would that be true, also, of the
email exchanges that you looked at relating to the
terms of a separation agreement between Mr. Tendras
and AboveNet?

A. I recall seeing them back at the time
when this all happened.

Q. So that the discussions relating to a
separation package you had seen, but the discussion
relating to the terms of a telecommuting arrangement
you had not seen; is that correct?

A. That's correct.

Q. Other than Mr. Peikes, or for that
matter anyone else at the law firm of Wiggitt & Dana

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William LaPerch

Q. That is all right as your counsel, did you discuss your
deposition with anyone?

A. Ho.

Q. You had no conversations with, for
example, Mr. Sokola relating to this deposition
today?

A. Ho, nope.

Q. And you had no conversations with
anyone else at AboveNet relating to this deposition;
is that correct?

A. I did not.

Q. Sir, can you just tell me, briefly, the
extent of your education.

A. I have a bachelor of science in
engineering from the United States Military Academy.

Q. When did you receive that?

A. 1971. I have a master's in business
administration from Columbia University.

Q. And when did you receive that?

A. 1987.

Q. Other than the B.S. in Engineering and
the MBA, do you hold any other degrees?

A. Ho.

Q. Do you have any licenses of any kind?

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William LaPerch

A. Ho.

Q. Professional licenses, I should say.

A. I do not.

Q. And can you now tell me the extent of
your work experience since obtaining your MBA at
Columbia in 1987.

A. I obtained my MBA in 1987. Almost
immediately upon obtaining the MBA, I left what was
then HYHEX, and joined MCI.

I spent November of 1999 until October
of 1999 at MCI.

I joined what was Metromedia Fiber
Networks in January of 2000. They were restructured
from May of 2003 until September, 2004. I became
the CEO after the restructuring, and that's a
position I've held since then.

Q. So, you became CEO of what was known
as Metromedia Fiber Networks in September of 2004;
is that correct?

A. By September of 2004, the name had
changed to AboveNet.

Q. When did it become known as AboveNet?

A. Upon exiting the bankruptcy in
September of '03 -- '04.

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William LaPerch

Q. And prior to September of '04, what was
your position at its predecessor company, Metromedia
Fiber Networks?

A. I was the senior VP of operations.

Q. And with respect to your prior work
experience, was your experience with MCI also
related to operations?

A. It was; operations and engineering.

Q. Now, can you just tell me, if you
could, what your responsibilities are and have been
as CEO of AboveNet?

A. My primary responsibility is to enhance
the value for shareholders.

Q. And your secondary responsibility?

A. Secondary responsibility is to ensure
that the company runs at a high level of efficiency
and -- and that the -- all of the operations, and
finance and sales components are working efficiently
together.

Q. And does part of your responsibility
include supervising the work of others?

A. I had -- I have a team of people that
report to me. I supervise their activities and make
sure that they accomplish the corporate objectives

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1 William LaPerca

00:26:04 2 that we set out at the beginning of the year.

00:26:06 3 Q. Do you have responsibility to review

00:26:08 4 the performance of any of the people that report to

00:26:10 5 you?

00:26:12 6 A. I do.

00:26:14 7 Q. And how many people do you review on

00:26:16 8 an annual basis?

00:26:18 9 A. What year?

00:26:20 10 Q. So, I gather from your answer, it varied?

00:26:22 11 A. Right.

00:26:24 12 Q. How many people did you report to when you

00:26:26 13 first became CEO in 2004?

00:26:28 14 A. I reviewed five. Let me just make sure

00:26:30 15 that's correct. I reviewed Rajiv Datta, Ravi Sokole,

00:26:32 16 Doug Tendras, John Tacquay, my administrative

00:26:34 17 assistant.

00:26:36 18 Q. What's the name of your administrative

00:26:38 19 assistant?

00:26:40 20 A. Gina Thomas.

00:26:42 21 Q. And has she continued to be your

00:26:44 22 administrative assistant?

00:26:46 23 A. She has.

00:26:48 24 Q. And why was --

00:26:50 25 A. And there was an additional person,

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1 William LaPerca

00:27:00 2 John Lynch, now that I think of it.

00:27:02 3 Q. Who was Mr. Lynch?

00:27:04 4 A. He had a CIO-type responsibility at the

00:27:06 5 time.

00:27:08 6 Q. What does that stand for, please?

00:27:10 7 A. IT.

00:27:12 8 Q. Okay. And so gather from your earlier

00:27:14 9 response, the people that you reviewed at some point

00:27:16 10 I changed after 2004; is that correct?

00:27:18 11 A. Yes.

00:27:20 12 Q. When did it change?

00:27:22 13 A. I don't recall the dates exactly; but

00:27:24 14 one time, John Lynch had left the company. Actually,

00:27:26 15 in 2004, the head of sales was a guy named Tom Burns.

00:27:28 16 He left the company in favor of John Tacquay, 2006

00:27:30 17 or so; I'm not exactly sure. So, that would --

00:27:32 18 there was a change there in the sales area.

00:27:34 19 Q. Other than those changes, did you

00:27:36 20 continue to review the people that you've identified

00:27:38 21 as the individuals who you reviewed starting in

00:27:40 22 2004?

00:27:42 23 A. To the best of my recollection, yes.

00:27:44 24 Q. And how is it determined that these

00:27:46 25 were the people that you were going to review on

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1 William LaPerca

00:26:02 2 an annualized basis?

00:26:04 3 A. They were direct reports.

00:26:06 4 Q. And when you say "direct reports," does

00:26:08 5 that mean you were their supervisor?

00:26:10 6 A. They reported in to me.

00:26:12 7 Q. And can you just tell me what that

00:26:14 8 means, that they reported in to you?

00:26:16 9 A. On an organization chart, they were

00:26:18 10 linked in to me as the person they were reporting

00:26:20 11 to.

00:26:22 12 Q. And what were your responsibilities

00:26:24 13 as the person who was, in effect, supervising these

00:26:26 14 individuals, other than reviewing their performance

00:26:28 15 on an annualized basis?

00:26:30 16 A. To ensure that we collectively met all

00:26:32 17 of the corporate objectives set out in the beginning

00:26:34 18 of the year.

00:26:36 19 Q. And did you have any input with respect

00:26:38 20 to whether these individuals were entitled to a

00:26:40 21 merit increase based on your review of their

00:26:42 22 performance?

00:26:44 23 A. I did.

00:26:46 24 Q. And what was your input, sir?

00:26:48 25 A. I made the recommendation on what their

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1 William LaPerca

00:26:50 2 merit increase would be to the board of directors.

00:26:52 3 Q. And did your recommendation have a

00:26:54 4 direct relationship to your assessment of their

00:26:56 5 performance on an annualized basis?

00:26:58 6 MA, PETES: Objection to the form.

00:27:00 7 You can go ahead and answer.

00:27:02 8 A. Can you ask the question again, please?

00:27:04 9 Q. I'll rephrase it.

00:27:06 10 Did you recommend these individuals

00:27:08 11 that you reviewed for a merit increase on the basis

00:27:10 12 of what your assessment was of their performance on

00:27:12 13 an annualized basis?

00:27:14 14 A. There were two components. One was

00:27:16 15 assessment and performance; the other was attainment

00:27:18 16 of corporate objectives.

00:27:20 17 Q. And did you recommend these individuals

00:27:22 18 for merit increase if they met those two components

00:27:24 19 as you've identified them?

00:27:26 20 A. Yes.

00:27:28 21 Q. Now, can you tell me, for the record,

00:27:30 22 what is the business of AbodeNet?

00:27:32 23 A. AbodeNet's business is to provide high

00:27:34 24 bandwidth connections for carrier and enterprise

00:27:36 25 customers that use 100 meg and above connectivity

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William LaPerch

for an essential mission critical part of their business.

Q. And the customers of AboveNet, I am you identify, without giving -- you didn't have to give me the names of the customers, but what kinds of businesses utilize AboveNet's services?

A. So, initially, the business was built on the finance, media, social networking carrier segments. More recently, we've had success in education, health care and legal segments.

Q. And how many employees does AboveNet have presently?

A. Somewhere around 700, including the folks in Europe.

Q. And how many employees, if you know, existed in 2004 when you became a CEO?

A. I didn't remember.

Q. Was it several hundred, to the best of your knowledge?

A. Yes.

Q. Was it less than 100 at that time?

A. Yes, it was less than 700.

Q. Its grown?

A. Its grown.

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William LaPerch

getting our fresh-start balance sheet in order and answering that we could do a -- get an audited result so that we could do a proper filing of a 10-K. So, it took us -- it took us a while, post bankruptcy, to get our house in order from that perspective.

Q. When, to the best of your knowledge, did AboveNet file its first 10-K once it emerged from bankruptcy?

A. 2006 or '07.

Q. And did you have any responsibility with respect to the content of the filing of that 10-K?

A. I did.

Q. And what was that responsibility?

A. We -- I was responsible for reviewing it and providing whatever input I thought necessary to file a compliant 10-K.

Q. And has that remained your responsibility with regard to subsequent 10-Ks that have been filed by AboveNet?

A. Yes, it has.

Q. And has that also been the case with regard to any 9-Ks that have been filed by AboveNet with the SEC?

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William LaPerch

Q. Is AboveNet a publicly traded company?

A. Yes.

Q. And how long has it been a publicly traded company?

A. May 9th, 2009.

Q. And prior to May 9th, 2009, was it listed on any of the exchanges?

A. Yes.

I'd like to just expand a little on "publicly traded." We listed ourselves on the New York Stock Exchange on May 9th, 2009. By definition, we were a public company. Prior to that, we were trading on the pink sheets.

Q. And when did that start, to the best of your knowledge?

A. Post bankruptcy.

Q. So, sometime in 2004?

A. Yes.

Q. And in connection with its status as a public company when it emerged from bankruptcy, were there required filings with the SEC investigations?

A. We had -- I don't know the answer to that question. We spent three years, post bankruptcy,

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William LaPerch

A. Could you rephrase that?

Q. Sure. Read it back.

(Question read)

A. I'm the CEO with the company. I'm responsible for anything that gets filed with the SEC.

Q. With regard to the 10-Ks, do you sign a certification of the accuracy, the content of the 10-Ks?

A. I do.

Q. And before you sign that, do you review the 10-K for its accuracy?

A. I do.

Q. And in signing the 10-K, is it your intent to apprise existing investors and potential investors that the content of the 10-K is accurate?

A. It is my intent.

Q. Do you know Doug Jendras?

A. Yes.

Q. How long have you known Mr. Jendras?

A. I met Doug somewhere in the middle of my MCI career, probably around 1994-1995, I guess.

Q. And what was the nature of your interaction with Mr. Jendras at that time?

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2 A. Initially, I knew him solely at MCI.
3 During some period of time, he became a part of the
4 operations team at MCI and was part of that team up
5 until the point I left in October of '99.
6 Q. Now, I gather from your response that
7 Mr. Tendas was an employee of MCI at the same time
8 that you were at MCI?
9 A. Yes.
10 Q. And were you both in operations at MCI?
11 A. We both ended up in operations. I
12 think, as I said, when I initially met Doug, he was
13 part of a business analysis team, which was in
14 finance.
15 Q. And when did Mr. Tendas become part
16 of the operations team at MCI, to the best of your
17 knowledge?
18 A. '96, '97; I don't recall exactly.
19 Q. And at that point in time, you were
20 already involved with operations, yourself, at MCI?
21 A. I was.
22 Q. And were you in charge of operations at
23 that point?
24 A. I had varying levels of responsibility
25 on a geographic basis. By the time I left MCI, I was

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William LaPorch

1 responsible for the entire U.S. But I started out
2 in the northeast, and then that moved to an east
3 coast responsibility; then, it moved to a nationwide
4 responsibility.
5 Q. Did Mr. Tendas report to you when he
6 became part of the operations team?
7 A. To the best of my recollection, he
8 was -- he reported to me as my, sort of, chief of
9 staff.
10 Q. And what were his responsibilities as
11 your chief of staff?
12 A. They were many responsibilities that
13 centered around the proper reporting and measurement
14 of the organization, important metrics from a
15 customer point of view, from a service-level
16 agreement point of view. He was in charge of my
17 suborgs. Stuff like that.
18 Q. And did you select him to be your
19 chief of staff?
20 A. I did.
21 Q. And when did you do that, sir?
22 A. When he took the job.
23 Q. When was that, if you remember?
24 A. I think, somewhere around '96 or '97.

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William LaPorch

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2 Q. Prior to '96/'97, had he already been
3 at MCI?
4 A. Yes.
5 Q. And you were aware of him, I gather,
6 and his job performance, before you chose him to be
7 your chief of staff; is that fair to say?
8 A. It's fair to say.
9 Q. And did he remain your chief of staff
10 for the duration of your tenure at MCI?
11 A. He did.
12 Q. Were you satisfied with his performance
13 in that role?
14 A. I was.
15 Q. And you indicated that at some point,
16 you left MCI; correct?
17 A. I correct.
18 Q. Did you leave there voluntarily?
19 A. No.
20 Q. What happened?
21 A. I -- my supervisor there, a gentleman
22 named Tom Wesley, and I did not get along.
23 Mr. Wesley decided that in the new MCI WorldCom
24 environment, I was no longer needed; so, he
25 terminated me.

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William LaPorch

1
2 Q. And when was that, sir?
3 A. October of '99.
4 Q. And did he give a reason for
5 terminating you?
6 A. Yes.
7 Q. What was the reason that he gave?
8 A. I left a meeting early in Chicago the
9 prior month.
10 Q. And after you were terminated, you
11 then, as I recall in your testimony, indicated you
12 started working at an entity called Metromedia Fiber
13 Networks; correct?
14 A. I started there January of 2000.
15 Q. So, there was a relatively short period
16 where you, I gather, were looking for work, before
17 you went to there?
18 A. That's correct.
19 Q. Now, did Mr. Tendas join you at
20 Metromedia Fiber Networks?
21 A. He did.
22 Q. Did you ask him to join you at
23 Metromedia Fiber Networks?
24 A. I did.
25 Q. So, it would be fair to say that he

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1 William LaPorch

2 left his job that he had at that point at MCI, it

3 join you at Metromedia Fiber Networks?

4 A. No.

5 Q. Was he terminated at MCI?

6 A. No.

7 Q. Did he quit his job?

8 A. Yes.

9 Q. Do you know when he quit his job?

10 A. After I left.

11 Q. And do you know why he quit his job?

12 A. He quit his job, because he didn't like

13 the way my termination was handled.

14 Q. And how did you become aware of that?

15 A. He shared with me a letter that he

16 wrote to Bernie Ebers.

17 Q. And that letter was written immediately

18 after you were terminated?

19 A. Shortly after, right.

20 Q. And how soon after his letter to

21 Mr. Ebers did you extend an invitation to him to

22 work at Metromedia Fiber Networks?

23 A. Well, he left MCI before I started at

24 Metromedia Fiber Networks.

25 Q. Now, you say you started Metromedia

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1 William LaPorch

2 Fiber Networks. Did I misunderstand you or you

3 withdrawn.

4 Q. Did you start the entity, Metromedia

5 Fiber Networks?

6 A. I did not.

7 Q. Okay. You were hired by an existing

8 company; is that correct?

9 A. That's correct.

10 Q. And it was after you were hired, that

11 you reached out to Mr. Jendras to join you at

12 Metromedia Fiber Networks; is that correct?

13 A. As soon as I was able to procure a

14 head-hunter, yes.

15 Q. And for what position did you hire

16 Mr. Jendras at Metromedia Fiber Networks?

17 A. Initially, to do some of the same stuff

18 that he was doing for me at MCI.

19 Q. And for the record, I can your initial

20 what that stuff was that he was doing for you at

21 MCI?

22 A. A lot of general staff work.

23 Metromedia Fiber Networks was in the process of

24 building an operations team; so, you know, the job

25 description was quite broad and diverse.

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1 William LaPorch

2 Q. And did his role expand over time at

3 Metromedia Fiber Networks?

4 A. It changed.

5 Q. In what way did it change?

6 A. Well, Metromedia Fiber Networks became

7 a distressed company, and it went from sort of an

8 Internet boom company to a company that was

9 literally fighting for survival. Doug was asked to

10 go and join the finance team during that period of

11 time, which he did.

12 Q. When was that, sir?

13 A. 2001 to 2002; somewhere in there.

14 Q. And what was your title at that point

15 in time?

16 A. I was senior VP of operations.

17 Q. And what were Doug's role with respect

18 to finance, starting in 2001?

19 A. To the best of my recollection, it was

20 very similar to a previous role he had at MCI, which

21 was business analysis, and that function is looking

22 at sales deals that come in to make sure they make

23 financial sense.

24 Q. And did that remain his role until the

25 filing of the bankruptcy?

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1 William LaPorch

2 A. I'm not sure when -- when that role

3 ended.

4 Q. And what was his title at the point in

5 time that Metromedia Fiber Networks filed a petition

6 of bankruptcy?

7 A. I don't recall.

8 Q. And did he remain with this entity when

9 it emerged from bankruptcy?

10 A. He did.

11 Q. And what was his title at that point in

12 time that Metromedia Fiber Networks emerged from

13 bankruptcy?

14 A. I think by then he had come back to

15 operations and was working for me again as sort of

16 my chief of staff in the operations role.

17 Q. How long was the bankruptcy?

18 A. May -- 15 months.

19 Q. Do you recall when it was filed?

20 A. May of 2003. September of '04.

21 Q. And do you recall what Mr. Jendras'

22 title was when the company became Abacus?

23 A. No.

24 Q. And you indicated that he performed

25 more of an operational role, similar to his functions

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as chief of staff.

A. When we came out of bankruptcy, the CEO of the company during bankruptcy left. I became the interim CEO. I was made the permanent CEO in January of -- following the bankruptcy. At that point in time when I put the organization together, Doug had responsibility for operations.

Q. Now, you said January. Was that January of 2005?

A. '04.

Q. '04. If I can just go back a second. You indicated, I believe, that the company emerged from bankruptcy in September of 2000.

Did you become interim CEO before it emerged from bankruptcy?

A. Ho.

Q. So --

A. I, actually -- I'm not thinking. You know, I may have the dates a year off. We went in, in May of 2002 and came out in September of '03. So, those are the dates. I became the CEO, permanent CEO, in January of '04.

Q. And it was at that point in time that Mr. Tendras became head of operations?

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William LaPerch

Q. And that process involved, for want of a better word, installations throughout the country?

A. Yes, it did.

Q. And those installations ultimately yield revenue to AboveNet; is that correct?

A. That's correct.

Q. And separate and apart from operations, was a sales group for AboveNet, as well; correct?

A. Correct.

Q. And what was the relationship, if any, between the sales team and the operations team?

A. The sales team sold; the operations team installed.

Q. So, there was -- it doesn't sound like there was a relationship, based on the answer you just gave.

A. Well, the relationship was that during the sales process, the sales team was required to frequently check with operations to make sure that it was viable to build things. They would talk with operations to get an assessment of the cost to build. And that was often a very important part of whether or not we would sign a contract and do a deal.

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William LaPerch

A. I gave him responsibility for the operations team, yes.

Q. And when you say you gave him responsibility, was he the head of operations at that point in time?

A. Yes.

Q. What was his title?

A. Senior VP of operations, to the best of my recollection.

Q. And what were his responsibilities as senior VP of operations?

A. To supervise and manage the operating teams in the various markets that were deployed around the U.S. They were comprised mostly of project managers that installed revenue for us after a customer signed up for -- with contracts with us.

Q. When you say installed revenue, you're referring to, I assume, the fiber/dsl cable?

A. The customer signed a contract to buy service from us; and it required -- it required some building construction of some equipment to be installed. Doug's team had project managers and supervisors that managed that process through outside vendors to completion.

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William LaPerch

Q. That would inform the salespeople what the cost of doing business would be with the particular customer?

A. That's correct.

Q. And that, in turn, determined whether there was potential to make a profit; is that correct?

A. That's correct.

Q. Now, you indicated that you reviewed Mr. Tendras' performance as the head of operations. That began in 2004; is that correct?

A. I don't understand what you mean by, reviewed his performance.

Q. Well, I think you testified, earlier, there were certain employees who were direct reports to you; correct?

A. Yes.

Q. And one of them was Mr. Tendras; correct?

A. That's correct.

Q. And it was those direct reports, as you've characterized them, who you reviewed on an annual basis; correct?

A. I wrote an Annual Review on those

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2 forka. We interacted on a daily basis as to how
3 things were going, in my view of how they were
4 going.

5 Q. And one of those individuals who you
6 reviewed was Mr. Jendras; correct?

7 A. Correct.

8 Q. And in connection with that review,
9 did you prepare something in writing containing your
10 assessment of Mr. Jendras' performance?

11 MA. PEIKES: Objection to the form.

12 Go ahead, you can answer.

13 A. The way that appraisals and reviews
14 were done as I was the CEO is, we would take the
15 corporate objectives. At the beginning of the year,
16 I would ask each of my direct reports how they
17 intend to support those corporate objectives. They
18 would come up with the supporting sub-objectives to
19 the corporate objectives. At the end of the year,
20 I would ask for a self-assessment on how they did
21 against meeting those objectives. And there was
22 additional input on the appraisal form that -- that
23 covered some leadership and management characteristics
24 that I filled out.

25 Q. So, you would prepare comments

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2 Mr. Jendras' performance?

3 A. Yes.

4 Q. And directing your attention to the
5 third-to-last page of this document, is that your
6 signature above the line indented as, "Supervisor"?

7 A. Yes.

8 Q. Now, redirecting your attention to the
9 first page of this document, you wrote the comments
10 in the space below the -- what is listed as the
11 first question?

12 A. Yes.

13 Q. And so, you wrote these words
14 verbatim in the second sentence, "He," meaning
15 Doug Jendras, "is an exceptional leader, who is
16 results-oriented, charismatic, and focused on making
17 our company wonderful." Your words; correct?

18 A. "Company successful," it says.

19 Q. I'll say it again. You wrote the
20 words, "He is an exceptional leader, who is results-
21 oriented, charismatic, and focused on making our
22 company successful;" correct?

23 A. Correct.

24 Q. Those were your words?

25 A. Yes.

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William LaPerle

2 regarding leadership and management on that form;
3 is that correct, sir?

4 A. Yes.

5 Q. I'm going to show you a document that
6 was marked at prior deposition as an exhibit
7 Exhibit 2 and ask you to take a look at that.
8 (Handing) I'm going to ask you some questions about
9 that document.

10 A. Should I read it?

11 Q. Well, I don't -- yes, if you want to.

12 I'm going to direct your attention to various
13 elements.

14 A. Okay.

15 Q. But I'm going to ask you, first,
16 whether you recognize this document once you've had
17 an opportunity to look at it.

18 (Witness peruses exhibit)

19 A. Yes, I recognize this document.

20 Q. Can you identify it, please?

21 A. It's an appraisal that I wrote on Doug
22 Jendras in 2004. I wrote it in 2005, and it covered
23 his 2004 performance.

24 Q. And were the statements you made in
25 that document accurate statements regarding

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William LaPerle

2 Q. And you also wrote in this same box
3 that, "Doug is also a trusted advisor to the CEO."

4 That would've been you at that point in
5 time?

6 A. Yes.

7 Q. And you indented in that full sentence,
8 "Doug is also a trusted advisor to the CEO when it
9 comes to setting the strategic direction of the
10 company." Again, your words; correct?

11 A. Yes.

12 Q. Now, you've indicated that the
13 assessments that you made with respect to employee
14 performance as to those employees you reviewed, had
15 some bearing as to whether these employees received
16 a merit increase in the ensuing year; is that
17 correct?

18 A. It was part of the equation, yes.

19 Q. And do you recall whether you
20 recommended that Mr. Jendras receive a merit
21 increase after you provided this evaluation of his
22 performance in 2004?

23 A. I don't recall 2004, specifically.

24 Q. Let me see if I can refresh your
25 recollection.

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William LaPerch

00:51:51 2 You can put this in the pile there, and
 00:51:54 3 we'll retrieve it later.
 00:51:55 4 A. (Witness complies)
 00:51:58 5 Q. I'm going to show you a document that
 00:51:59 6 was previously marked at a deposition as Plaintiff's
 00:52:02 7 Exhibit 4, and it's a document entitled "AboveNet,
 00:52:05 8 Inc. Employee Action Form." And it says, "Effective
 00:52:10 9 date: 5/1/2000." And it has the name "Doug Jendras"
 00:52:15 10 on it.

00:52:15 11 Do you recognize any of the signatures
 00:52:18 12 on this document?

00:52:18 13 (Witness peruses exhibit)

00:52:18 14 A. I recognize my signature under "SEP."

00:52:21 15 Q. And there's a reference to Mr. Jendras'
 00:52:24 16 existing annual salary; correct?

00:52:30 17 A. Correct.

00:52:30 18 Q. And then, there's a reference to a new
 00:52:33 19 annual salary; correct?

00:52:38 20 A. Correct.

00:52:38 21 Q. And the existing salary is listed at
 00:52:40 22 195,000. The new annual salary is reflected as
 00:52:45 23 225,000.

00:52:48 24 Did this memorialize a merit increase
 00:52:51 25 that you were approving for Mr. Jendras effective

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00:54:08 2 was marked at a previous deposition as Plaintiff's 3.
 00:54:13 3 This, too, is entitled "Employee Action Form."
 00:54:13 4 (Witness peruses exhibit)
 00:54:17 5 Is that your signature on the bottom
 00:54:18 6 of the page?

00:54:20 7 A. It is.

00:54:20 8 Q. And does this, in fact, memorialize a
 00:54:23 9 merit increase recommended by you for Mr. Jendras,
 00:54:27 10 effective June 1, 2005?

00:54:29 11 A. It does.

00:54:30 12 Q. And so, Mr. Jendras' salary was
 00:54:33 13 increased on your recommendation from 225,000, to
 00:54:36 14 \$236,250; is that correct, sir?

00:54:43 15 A. That's correct.

00:54:45 16 Q. Do you recall the sum and substance of
 00:54:51 17 your review of Mr. Jendras' performance in the year
 00:54:56 18 2005?

00:54:57 19 A. No.

00:55:05 20 Q. I'm going to show you a document
 00:55:07 21 previously marked as Plaintiff's Exhibit 5 at a
 00:55:14 22 prior deposition. And it's entitled "Employee
 00:55:17 23 Performance Evaluation Form - 2005." And I want to
 00:55:27 24 direct your attention to the second-to-last page,
 00:55:34 25 please.

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William LaPerch

00:52:54 2 May 1, 2004?
 00:52:58 3 A. Yes.
 00:53:01 4 Q. And you can put that in the pile.
 00:53:02 5 A. (Witness complies)
 00:53:03 6 Q. Did you also, after your review of
 00:53:06 7 Mr. Jendras' performance in the year 2004 as
 00:53:10 8 reflected in Plaintiff's Exhibit 2, make a similar
 00:53:15 9 recommendation relating to a merit increase in
 00:53:18 10 Mr. Jendras' compensation for 2005?

00:53:23 11 A. The --

00:53:30 12 (Witness peruses exhibits) The
 00:53:37 13 merit increase is usually associated with the
 00:53:40 14 employment -- with the appraisal; however, there
 00:53:41 15 appears to be a period of time -- I'm not sure
 00:53:44 16 why it was effective 5/1. Merit increases are
 00:53:49 17 usually effective 3/15, for an appraisal.

00:53:51 18 Q. March 15th?

00:53:51 19 A. Right.

00:53:55 20 Q. Do you recall whether a merit increase
 00:53:56 21 was recommended by you for Mr. Jendras in 2005?

00:54:02 22 A. No.

00:54:02 23 Q. No, you don't remember?

00:54:08 24 A. No, I don't remember. Sorry.

00:54:09 25 Q. I'm going to show you a document that

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00:54:40 2 Does that contain your signature
 00:54:43 3 above the signature line designated
 00:54:47 4 "Supervisor"?

00:54:50 5 (Witness peruses exhibit)

00:54:50 6 A. Yes.

00:54:50 7 Q. And was this, in fact, your assessment
 00:54:59 8 of Mr. Jendras' performance in the year 2005?

00:55:00 9 (Witness peruses exhibit)

00:55:02 10 A. Yes.

00:55:03 11 Q. And are these your words located below
 00:55:06 12 the space designated in response to criteria number
 00:55:14 13 one?

00:55:14 14 A. I'm sorry. Where is that?

00:55:16 15 Q. Directing you to the first page --

00:55:18 16 A. Got it, yep.

00:55:19 17 Q. Those are your words; correct?

00:55:21 18 A. Yes.

00:55:27 19 Q. And you write in the box below what is
 00:55:29 20 designated as the first criteria for evaluation,
 00:55:32 21 "Doug had an excellent year in 2005. He took on
 00:55:35 22 significantly more responsibility and consequently,
 00:55:38 23 had a much larger impact upon the success of our
 00:55:40 24 company."

00:55:41 25 What were the increased responsibilities

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2 assumed by Mr. Jendras in 2005?

2 Increase Memorandum to the Employee Personnel File."

3 A. I don't recall specifically.

3 (Hanging)

4 Q. Do you have any general recollection?

4 Are you familiar with this document?

5 A. I think part of it was just volume of

5 (Witness peruses exhibit)

6 everything - increased business, increased number of
7 contracts, increased people, increased sales. I6 A. I'm not familiar with this specific
7 document, no.8 don't recall any specific organizational changes
9 that we made that year, but there could've been.8 Q. Have you ever seen a document like this
9 before?

10 Q. Okay. You go on to write, "His

10 A. I have.

11 leadership style is effective and creates both
12 loyalty and effectiveness within the organization."

11 Q. Is this typically what was utilized

13 what was the basis for that statement?

12 as -- for the purpose of memorializing a recommended
13 merit increase?

14 A. It was my view of his leadership style.

14 A. Yes.

15 Q. Now, you also write at the bottom of

15 Q. And you're noted on this document as
16 the supervisor for Mr. Jendras; correct?16 this response to criteria one, "In summary, Doug
17 was an essential part of our success in 2005. His
18 ability to grow and learn, along with his great
19 leadership, was very evident."

17 A. Correct.

20 What was the basis for that statement

18 Q. And there's a reflection in this

21 that you made regarding his leadership?

19 document that, effective March 7, 2006, Mr. Jendras
20 would receive a merit increase of \$2,000 over his
21 previous annual rate of \$216,250; correct?

22 A. We were a company that had recently

22 A. Correct.

23 emerged from bankruptcy. We had a lot of challenges
24 in terms of getting ourselves back in -- getting
25 ourselves back in look-forward momentum and having23 Q. And that would have been on the basis
24 of a recommendation made by you, sir?

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William LaPerch**William LaPerch**2 success in the marketplace, and Doug was part of
3 that.

2 Q. And before this merit increase took

4 Q. It's fair to say you were satisfied

3 effect, would you have been asked to comment on a
4 proposed merit increase?

5 with his performance in 2005; correct?

5 A. To whom?

6 A. I was.

6 Q. Were you, for example, given a

7 Q. And did you recommend a merit increase

7 spreadsheet with the names of employees who you were
8 responsible for as your direct reports?8 for Mr. Jendras on the basis of your assessment of
9 his performance in 2005?

9 A. Yes.

10 A. Isn't that what you already showed me
11 on that sheet?10 Q. And would you note on that spreadsheet
11 your recommendation as to salary increase based on12 Q. I am asking you now whether in 2006,
13 there was a merit increase based on your assessment
14 of his performance in the year 2005 that had been
15 concluded when you prepared your review?

12 merit increase?

16 A. I don't recall.

13 A. Salary increase based on attainment of
14 company objectives and individual performance.

17 Q. I'm going to show you a document that

16 Q. And in the case of Mr. Jendras, you
17 recommended that he receive an increase of \$12,000

18 was marked at a prior deposition as Plaintiff's

17 based on that criteria; is that correct, sir?

19 Exhibit 8. (Hanging)

18 A. That's what this document says.

20 And if you could just add the other

19 Q. I show you a document that was

21 document to the pile, so I can retrieve it later.

20 previously marked as Plaintiff's Exhibit 6 at a

22 A. (Witness complies)

21 prior deposition. (Hanging)

23 Q. Thank you.

22 Do you recognize this document?

24 What had previously been marked as

23 (Witness peruses exhibit)

25 Plaintiff's Exhibit 8 was a document entitled "Merit

24 A. Based on my signature on the second-to-
25 last page, yes, I do.

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William LaPerch

Q. And what is this document?

A. It's an Employee Performance Evaluation form for 2006 for Doug Jendras.

Q. And directing your attention to the third-to-last page of this document, the -- I'll wait until you get there.

There's a heading entitled "Areas for evaluation."

Do you see that there?

A. I do.

Q. Did you fill out the boxes with Xs for each category used as an area for evaluation?

A. I don't know. There's no name on it.

Q. You don't know whether you did it or someone else did it?

A. No. I don't know whose this is; there's no name on it.

Q. Okay. So, you're saying you're not entirely sure if this is Mr. Jendras' evaluation?

A. Well, there's no name on it.

Q. Okay. I'll just tell you that you'll see that there's a Bates stamp on the lower right-hand side, Q79. This was a document produced by your attorneys in response to a request for

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production, and this is what was presented to us as the performance evaluation for Mr. Jendras.

Do you have any reason to think that this is not what it purports to be?

A. No.

Q. Were you asked to look at your documents to see if you had any responsive documents to our request?

A. I was.

Q. Did you look to see whether you had copies of prior evaluations for Mr. Jendras' performance?

A. I did.

Q. And so, if you had any documents pertaining to an evaluation of Mr. Jendras' performance, you provided it to your counsel?

A. I did.

Q. And would your file have included the annual -- copies of the Annual Reviews or performance by Mr. Jendras, including 2006?

A. No.

Q. So, you're not sure if this came from your file or from somebody else?

A. That's correct.

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William LaPerch

Q. And you'll note that in the areas for evaluation, there are categories - unsatisfactory, below expectation, meets expectation, and exceeds expectation; correct?

A. Correct.

Q. And you'll note, also, that the great majority of these various categories reflect a judgment that Mr. Jendras' performance exceeds expectation for the year 2006; correct?

MR. PERKES: Objection to the form.

You can answer.

A. Seven of those do.

Q. And in total, there are how many, sir?

A. Eleven.

Q. Seven of the 11 reflected a judgment that Mr. Jendras' performance exceeds expectation; correct?

A. Correct.

Q. And to the extent that there were, on your count, four other categories for which the exceeds expectation was not checked off, the category that was checked off was meets expectation; correct?

A. Correct.

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William LaPerch

Q. Now, just as a point of reference, I'm looking at this document, and I'm prepared to acknowledge if I'm wrong. I see three categories that are listed as meets expectation. Do you agree with me?

A. I do.

Q. So, that there were nearly eight categories where Mr. Jendras' performance was deemed to exceed expectations and three where it was deemed to meet expectations; correct?

A. Correct.

Q. Now, subsequent to your evaluation of Mr. Jendras' performance for 2006, were you asked upon to make an assessment whether Mr. Jendras was deserving of a merit increase?

A. Yes.

Q. Do you recall what your recommendation was?

A. No.

Q. Okay. If you would put that back, please.

A. (Witness complies)

Q. I'm going to show you a document that was marked at a prior deposition as Plaintiff's

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William LaPerch

01:05:38 2 Exhibit 9, and that document is entitled "Merit
01:05:40 3 Increase Memorandum to the Employee Personnel File,"
01:05:42 4 and it lists Douglas Jendras, his title, his
01:05:44 5 department, and it lists you as his supervisor.
01:05:46 6 This was a document produced by your attorneys.
01:05:48 7 Do you recognize it?
01:05:50 8 A. Yes, I recognize the document.
01:05:52 9 Q. And what is it, sir?
01:05:54 10 A. It's a merit increase for Douglas
01:05:56 11 Jendras for his performance effective March, 2007.
01:05:58 12 Q. And it indicates there was an annual
01:06:00 13 merit increase of \$14,895, effective March 1, 2005,
01:06:02 14 over its prior annual rate of \$248,250; correct?
01:06:04 15 A. It was effective March 1, 2007, not
01:06:06 16 2005.
01:06:08 17 Q. Okay. If I misspoke, I apologize.
01:06:10 18 Effective March 1, 2007?
01:06:12 19 A. Correct.
01:06:14 20 Q. And this was the end result of a
01:06:16 21 recommendation you made, sir?
01:06:18 22 A. Yes.
01:06:20 23 Q. And you made that recommendation after
01:06:22 24 you had reviewed his performance for the year 2006;
01:06:24 25 is that correct?

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01:08:40 2 an opinion as to whether it would be approved or not
01:08:42 3 approved; is that correct?
01:08:44 4 A. I think that's incorrect. I have to go
01:08:46 5 back and check, but I think we gave it to them for
01:08:48 6 informational purposes. You know, they did not
01:08:50 7 approve or disapprove, as a matter of record, these
01:08:52 8 salary increases.
01:08:54 9 Q. Would the board of directors approve or
01:08:56 10 disapprove a proposed merit increase?
01:08:58 11 A. Not to my recollection.
01:09:00 12 Q. If the individual who was receiving a
01:09:02 13 merit increase was an officer of the company, would
01:09:04 14 the board of directors be asked to approve the
01:09:06 15 proposed increase?
01:09:08 16 A. I don't recall.
01:09:10 17 Q. If an officer of the company received a
01:09:12 18 merit increase, would it be disclosed in the public
01:09:14 19 filing with the SEC?
01:09:16 20 A. Yes, it would.
01:09:18 21 Q. And that public filing, as you've
01:09:20 22 indicated, if it was presented to the SEC, it would
01:09:22 23 be something that you had already reviewed prior to
01:09:24 24 the filing; is that correct?
01:09:26 25 A. Yes.

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William LaPerch

01:07:38 2 A. His performance and the company
01:07:40 3 objectives.
01:07:42 4 Q. And was the procedure similar to the
01:07:44 5 one you described in the earlier year, where you
01:07:46 6 were given a spreadsheet for the employees who were
01:07:48 7 direct reports to you, and you would make a
01:07:50 8 recommendation?
01:07:52 9 A. Yes.
01:07:54 10 Q. And would that recommendation then be
01:07:56 11 submitted to the board of directors for their
01:07:58 12 assessment and review or to the Compensation
01:08:00 13 Committee?
01:08:02 14 A. To the Compensation Committee. It
01:08:04 15 would be reviewed -- it would be submitted to them
01:08:06 16 for their information and discussion.
01:08:08 17 Q. And what would they do with that
01:08:10 18 information?
01:08:12 19 A. If they saw any need to discuss it,
01:08:14 20 they would.
01:08:16 21 Q. And would they approve it?
01:08:18 22 A. I can't recall one they didn't approve.
01:08:20 23 Q. But my question really was: Did they
01:08:22 24 actually approve -- whether or not they rejected a
01:08:24 25 recommendation, the point is that they would render

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William LaPerch

01:09:52 2 Q. I show you a document that was marked
01:09:54 3 as Plaintiff's Exhibit 7 at a prior deposition, and
01:09:56 4 it's a document entitled "Employee Performance
01:09:58 5 Evaluation Form - JUP?", and reflects the name of
01:10:00 6 Doug Jendras. It reflects your name as the reviewer
01:10:02 7 and 2007 as the review period.
01:10:04 8 Do you recognize this document?
01:10:06 9 (Witness peruses exhibit)
01:10:08 10 A. Based on my signature on the last page,
01:10:10 11 yes, I do.
01:10:12 12 Q. And just since you mentioned it, the
01:10:14 13 last page that contains your signature -- is that
01:10:16 14 your signature above the signature line that's
01:10:18 15 identified as "Supervisor/Reviewer"?
01:10:20 16 A. Yes.
01:10:22 17 Q. And can you tell me what this document
01:10:24 18 is, please?
01:10:26 19 A. It's Doug Jendras' Employee Performance
01:10:28 20 Evaluation for 2007.
01:10:30 21 Q. And in looking at the document, are you
01:10:32 22 able to tell me whether this is a favorable review
01:10:34 23 or not?
01:10:36 24 A. I think it's generally a favorable
01:10:38 25 review, yes.

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William LaPerch

Q. And redirecting your attention to the category entitled, "Areas for Evaluation," which begins on the fourth page of this review form, this continues to show the criteria that I identified in the earlier evaluation of unsatisfactory, below expectation, meets expectation, and exceeds expectation; correct?

A. Correct.

Q. And the categories that are listed in this document are Ethics and Integrity, Compliance with Internal Controls, Technical Skills/Job Knowledge, Communication Skills, Quality, Quantity/Productivity, Planning and Organizing Work, Attendance, Integration into Work Unit, Supervisory Skills and Team Building; correct?

A. Correct.

Q. And each and every one of these areas that I've identified that appear on this document, reflect a judgment that Mr. Jendras' performance for 2007 exceeds expectations; correct?

A. Yes.

Q. Now, do you recall whether, subsequent to signing this evaluation form, whether you made a recommendation for an additional merit increase for

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A. Yes.

Q. And this reflects an increase for Mr. Jendras in the amount of \$16,855 to a new annual salary of 280,000; correct?

A. Correct.

Q. Was this increase based on a recommendation that you had made?

A. I don't recall.

Q. Would this change have taken place without any input from you?

A. I don't know.

Q. There's a reference here in the email which reads, "Bill and Rob," the second sentence, "I will need approval from both of you on the following base salary increases and a copy of the board minutes approving these increases."

Do you see that there?

A. I do.

Q. Did you give approval for this base salary increase reflected in Ms. Chang's email?

A. I don't recall.

Q. You don't recall whether you did or you didn't; is that true, sir?

A. That's true.

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William LaPerch

Mr. Jendras?

A. I don't recall.

Q. I'm going to show you a document that was marked at a prior deposition as Plaintiff's Exhibit 10. (Handing) And this, too, is a document that was produced by your attorneys in response to a request for production. And it reflects an email -- what appears to be an email from Sheila Chang to you, Bill LaPerch; and Rob Sokda; is that correct, sir?

A. That's correct.

Q. And who is Sheila Chang?

A. Director of human resources.

Q. And do you recall receiving this email from Ms. Chang on September 12th, 2008?

A. No.

Q. The subject is "Salary Increases for SVPs and CEO;" correct?

A. Correct.

Q. Would it be fair to say that "SVP" stands for senior vice president?

A. Yes.

Q. And "CEO" stands for chief executive officer?

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William LaPerch

Q. Okay. I show you a document that was previously marked as Plaintiff's Exhibit 13 at a prior deposition. (Handing) This document is entitled "Employee Annual Performance Appraisal - 2009." Again, it contains the name of Mr. Jendras as the employee, and it contains your name as the reviewer.

Let me direct your attention to the last page of this document and ask you if you recognize any of the signatures there.

(Witness peruses exhibit)

A. I recognize my signature.

Q. And can you identify this document, sir?

A. It's the Employee Annual Performance for Doug Jendras for 2009.

Q. And is this a favorable review of Mr. Jendras' performance in 2009?

(Witness peruses exhibit)

A. I would say, overall, yes, it's favorable.

Q. And if I could direct your attention to the second-to-last page of this document, there's a handwritten comment on the top of the page there.

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William LaPerch

Do you recognize that handwriting?

(Witness peruses exhibit)

A. No.

Q. So that you don't believe that's your handwriting?

A. It might be. Not sure.

Q. It says, "Thanks for another great year. Looking forward to 2010."

Q. Do you have a recollection of writing that statement on this review form?

A. No.

Q. Are those your initials on the bottom of the page?

A. They are.

Q. To your knowledge, did anybody else make comments on Mr. Jendras' review?

A. No.

Q. If I can direct your attention to the third page of this document, there is also a statement, the fourth paragraph down -- I'll say five paragraphs down -- handwritten in capital letters, "GREAT YEAR!"

Q. Do you see that there?

A. No. Am I on the right page?

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William LaPerch

Q. It should say, page three of ten.

MR. PEIKES: I think you said, handwritten. I think you meant typewritten.

MR. WEINSTEIN: I apologize if I misspoke. Yes. Handwritten -- I mean, typewritten. Said it again. Typewritten.

A. Where are you?

Q. Page 3 of 10. One, two, three, four, five. Five paragraphs down it says, "Participate in monthly revenue recognition meetings and address all operational shortcomings. Objective accomplished. GREAT YEAR!", exclamation point.

Q. Do you see that there?

A. Yes, I do. I do see that.

Q. Were those your words?

A. I assume so.

Q. Are those your initials on the bottom of the page, as well?

A. They are.

Q. Okay. Do you recall whether, subsequent to executing this form containing these comments about Mr. Jendras' performance, whether you made a recommendation for an additional merit increase for Mr. Jendras?

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William LaPerch

A. I don't recall.

Q. You don't recall whether you did or you didn't; is that correct?

A. That's correct.

Q. I'm going to show you what was marked previously as Plaintiff's Exhibit 30 at a prior deposition. This is a document entitled "Merit Increase Memorandum to the Employee Personnel File." This contains Mr. Jendras' name, identifies him as the SVP of operations, and lists you as the supervisor.

(Witness peruses exhibit)

Q. Do you recognize this document?

A. Yes.

Q. What is it, sir?

A. A Merit Increase Memorandum for Doug Jendras.

Q. And this reflects that effective March 1, 2010, Mr. Jendras' salary was to be increased by \$75,000; correct?

A. Yes.

Q. And that increase is identified as an annual merit increase; correct?

A. Yes.

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William LaPerch

Q. And it raised his salary from 28p, PPO to 290,000; correct?

A. Yes.

Q. And would this document be a memorialization of a recommendation you made regarding a merit increase for Mr. Jendras, effective March 1, 2010?

A. Yes.

Q. Now, during this same period of time, was there also discussion, in connection with Mr. Jendras' compensation, about performance bonuses?

A. Yes.

Q. And would you have been involved in that discussion, as well?

A. Yes.

Q. And did Mr. Jendras receive performance bonuses, as well, during his tenure?

A. He did.

Q. And would it be fair to say you recommended that he receive performance bonuses?

A. Yes.

Q. Did Mr. Jendras have an employment agreement to the best of your knowledge?

A. Yes.

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William LaPerch

Q. Was it a written employment agreement?

A. Yes.

Q. I'm going to show you a document marked

at a prior deposition as Plaintiff's Exhibit 7A.

(Handing) It's a document entitled "Employment

Agreement." And it was a document produced by your

attorneys, containing Bates stamp numbers Q117

through Q131. Please take a moment to look at that

document.

(Witness peruses exhibit)

Have you had a chance to look at it?

A. I have.

Q. Do you recognize it?

A. Yes.

Q. What is it, sir?

A. It's the Employment Agreement for
Doug Iendras.

Q. And this agreement reflected an

employment term for the period commencing

September 2nd, 2003; correct?

A. Correct.

Q. And it indicated that it was for a

period of three years; correct? And I'll direct

your attention, if you don't know the answer to that

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William LaPerch

offhand, to the first paragraph on the first page,

"Employment Term"; it says.

A. That's correct.

Q. And do you know whether or not

Mr. Iendras' employment was extended after the

expiration of this Employment Agreement?

A. Yes.

Q. Was it?

A. It was.

Q. I'm going to show you a document that

was marked at a previous deposition as Plaintiff's

Exhibit 15. (Handing) I'm going to ask you to take

a look at that and let me know if you can identify

it, please.

(Witness peruses exhibit)

A. Yes. It's Doug Iendras' Employment

Agreement for the period September 2nd, 2003,

through November 16th, 2006.

Q. And do you know whether Mr. Iendras'

employment was extended beyond the November 16th,

2006, date?

MR. PEJES: Objection to the form.

A. I don't know.

Q. If I can just direct your attention to

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William LaPerch

the last page of this document. Do you recognize

any of the signatures on that page?

A. Yes.

Q. Which ones do you recognize?

A. I recognize my signature and Doug's
signature.

Q. I'm going to show you a document that

was marked at an earlier deposition as Plaintiff's

Exhibit 16. (Handing) It's a document entitled

"First Amendment to Employment Agreement." And

once you've had a chance to look at it, I'd like

you to tell me if you can identify it.

A. It's the First Amendment to Doug
Iendras' Employment Agreement.

Q. And does this reflect an extension or

the term of employment from the expiration date that

was set forth in the agreement of November 16th,

2006?

A. Yes.

Q. And what was the extension set forth in

this first amendment that you're looking at?

A. It was extended to December 31st, 2006.

Q. Now, would you have any input regarding

the decision to extend the term of employment for

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William LaPerch

Mr. Iendras?

A. Yes.

Q. So, it would be fair to say that you

were in favor of this extension set forth in the

first Amendment; is that correct, sir?

A. Yes.

Q. Okay. Now, are you familiar with

AboveNet's 2008 Equity Incentive Plan?

A. Yes.

Q. How are you familiar with it?

A. I'm familiar with the high-level

detail of the plan as a -- as a subsequence -- a

subsequent activity after our original equity plan
of 2003.

Q. And what was the purpose of the 2008

Equity Incentive Plan?

A. To ensure that the board and myself had
the ability to -- to retain and reward as we saw
appropriate through equity allocations.

Q. And when you say "equity allocations,"

are you talking about stock?

A. RSUs, yes.

Q. And could you say for the record what

"RSU" stands for.

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William LaPerch

01:27:43 **2** **A.** Restricted stock units.
 01:27:44 **3** **Q.** And did you have any involvement in
 01:27:45 **4** connection with the determination of whether an
 01:27:46 **5** award should be made to certain employees?
 01:27:47 **6** **A.** I did.
 01:27:48 **7** **Q.** What was your role, sir?
 01:27:49 **8** **A.** It was -- I was the final management
 01:27:50 **9** reviewer of these awards for all RSU awards for the
 01:27:51 **10** company, and I had -- I had input on the awards for
 01:27:52 **11** my direct reports.
 01:27:53 **12** **Q.** And the direct reports would be the
 01:27:54 **13** same individuals you had described earlier, when
 01:27:55 **14** I asked you about merit increases, as well?
 01:27:56 **15** **A.** That's correct.
 01:27:57 **16** **Q.** And one of those direct reports,
 01:27:58 **17** obviously, was Mr. Hendras, correct?
 01:27:59 **18** **A.** Yes.
 01:28:00 **19** **Q.** So, you had direct input as to whether
 01:28:01 **20** Mr. Hendras would receive an award of restricted
 01:28:02 **21** stock units; is that correct, sir?
 01:28:03 **22** **A.** That's correct.
 01:28:04 **23** **Q.** And once you provided your input
 01:28:05 **24** regarding an award for your direct reports, what,
 01:28:06 **25** if anything, happened after that?

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William LaPerch

01:28:07 **2** **A.** They were put on a spreadsheet and
 01:28:08 **3** shared with the Compensation Committee.
 01:28:09 **4** **Q.** And what was the responsibility of the
 01:28:10 **5** Compensation Committee as you understood it once
 01:28:11 **6** they received these recommended awards?
 01:28:12 **7** **A.** The Compensation Committee reviewed
 01:28:13 **8** them; asked some questions about the info that
 01:28:14 **9** were given, the differences between, you know, some
 01:28:15 **10** awards; and then had final approval authority.
 01:28:16 **11** **Q.** And if the Compensation Committee
 01:28:17 **12** approved a proposed stock award, what, if anything,
 01:28:18 **13** would happen next regarding the approval of the
 01:28:19 **14** award?
 01:28:20 **15** **A.** If the Compensation Committee approved
 01:28:21 **16** it, we -- we would, between the time they approved
 01:28:22 **17** it and -- we would have some point in time where we
 01:28:23 **18** would actually share that information with employees
 01:28:24 **19** if everything, you know, remained the same between
 01:28:25 **20** the time they approved it and when we told the
 01:28:26 **21** employees.
 01:28:27 **22** **Q.** There would be a lag -- you would
 01:28:28 **23** notify the employee before the Compensation
 01:28:29 **24** Committee acted on it?
 01:28:30 **25** **A.** No.

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William LaPerch

01:28:31 **2** **Q.** Did I misunderstand you?
 01:28:32 **3** **A.** You did misunderstand.
 01:28:33 **4** **Q.** So, the sequence of events is: You
 01:28:34 **5** would provide input. The Compensation Committee
 01:28:35 **6** would indicate whether they approved it. And the
 01:28:36 **7** employee who was the beneficiary of an award would
 01:28:37 **8** be notified. Is that correct?
 01:28:38 **9** **A.** Providing there were no -- no other
 01:28:39 **10** activities that required management action between
 01:28:40 **11** the time when the board approved it and when we told
 01:28:41 **12** the person that was getting the award, yes.
 01:28:42 **13** **Q.** Now, you just mentioned "board approval."
 01:28:43 **14** When did board approval occur in
 01:28:44 **15** connection with this process? Would it be after the
 01:28:45 **16** Compensation Committee met and passed upon the
 01:28:46 **17** proposed award?
 01:28:47 **18** **A.** To the best of my recollection, the
 01:28:48 **19** usual procedure was: We would have a Compensation
 01:28:49 **20** Committee meeting just prior to the board meeting,
 01:28:50 **21** discuss it with the Compensation Committee meeting.
 01:28:51 **22** And then, there was usually very little time between
 01:28:52 **23** when the Compensation Committee meeting -- when the
 01:28:53 **24** Compensation Committee approved it and when the
 01:28:54 **25** board approved it. That was the general routine.

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William LaPerch

01:28:55 **2** **Q.** Am I to understand, then, those
 01:28:56 **3** meetings would take place the same day?
 01:28:57 **4** **A.** Very often.
 01:28:58 **5** **Q.** Would it take place in the same hour?
 01:28:59 **6** **A.** Hard to say; don't recall.
 01:29:00 **7** **Q.** Were you present when the proposed
 01:29:01 **8** awards were discussed at Compensation Committee
 01:29:02 **9** meetings?
 01:29:03 **10** **A.** I was.
 01:29:04 **11** **Q.** Were you asked to comment on the
 01:29:05 **12** proposed awards by the members of the Compensation
 01:29:06 **13** Committee?
 01:29:07 **14** **A.** I usually -- I usually took it upon
 01:29:08 **15** myself to provide some context for the awards and my
 01:29:09 **16** views on them.
 01:29:10 **17** **Q.** And were you also present -- withdrawn.
 01:29:11 **18** Were you a member of the Board of
 01:29:12 **19** directors, sir?
 01:29:13 **20** **A.** I was.
 01:29:14 **21** **Q.** And you still are, sir?
 01:29:15 **22** **A.** I am.
 01:29:16 **23** **Q.** And so, it would be fair to say when
 01:29:17 **24** the board of directors met, you would be present to
 01:29:18 **25** discuss the proposed awards that had been reviewed

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William LaPerch

William LaPerch

01:31:02 2 Q. By the Compensation Committee; correct?

01:31:41 3 A. Correct.

01:31:58 4 Q. And you would vote at the board of

01:31:58 5 directors meetings; correct?

01:31:58 6 A. Correct.

01:31:48 7 Q. And if the board of directors approved

01:31:53 8 the award, would there then be a disclosure in a

01:31:53 9 public filing with the SEC?

01:31:58 10 A. There was disclosure required some time

01:32:04 11 frame after the approval. I'm not sure what the

01:32:06 12 exact requirement is, though.

01:32:08 13 Q. But your best understanding is that the

01:32:10 14 content of the award was something that was

01:32:12 15 disclosed to the public after the board of directors

01:32:15 16 approved it?

01:32:16 17 A. For the -- for the officers, yes.

01:32:17 18 Q. And Mr. Jendras, of course, was an

01:32:21 19 officer; correct?

01:32:21 20 A. He was, yes.

01:32:24 21 Q. So that if Mr. Jendras received an

01:32:29 22 award, it was disclosed in a public filing with the

01:32:31 23 SEC; is that correct?

01:32:35 24 A. At some point in time after the board

01:32:35 25 approved it, yes.

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01:33:24 2 Compensation Committee?

01:33:36 3 A. Since the emergence from bankruptcy.

01:33:50 4 Q. So, that would take us back to 2003;

01:33:51 5 is that correct?

01:33:51 6 A. Yes, sir.

01:34:02 7 Q. And has he also been a member of the

01:34:05 8 board of directors since that time?

01:34:07 9 A. He has.

01:34:07 10 Q. And where is Mr. Subotnick located,

01:34:12 11 if you know?

01:34:13 12 A. In Manhattan.

01:34:14 13 Q. Does he run his own company?

01:34:16 14 A. He -- he owns many companies.

01:34:16 15 Q. And who else is a member of the

01:34:18 16 Compensation Committee?

01:34:18 17 A. Mr. Richard Postma.

01:34:22 18 Q. And is Mr. Postma also a member of the

01:34:25 19 board of directors?

01:34:26 20 A. He is.

01:34:27 21 Q. And how long has he been a member of

01:34:29 22 the Compensation Committee and the board of

01:34:31 23 directors?

01:34:31 24 A. Since 2003.

01:34:34 25 Q. And is he an employee of the company?

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William LaPerch

William LaPerch

01:34:38 2 Q. And you would, as you've indicated

01:34:40 3 previously, be asked to review the accuracy of what

01:34:44 4 filing before it was filed with the SEC; is that

01:34:47 5 correct?

01:34:47 6 A. That's correct.

01:34:48 7 Q. And you would certify, in connection

01:34:51 8 with the 10-K, that it was accurate; correct?

01:34:51 9 A. If it was a 10-K, yes.

01:34:56 10 Q. Now, you mentioned the Compensation

01:34:59 11 Committee.

01:35:00 12 Who are the members of the Compensation

01:35:05 13 Committee?

01:35:05 14 A. Mr. Subotnick.

01:35:11 15 Q. What's his first name?

01:35:12 16 A. Stewart.

01:35:13 17 Q. And is he also a member of the board

01:35:15 18 of directors?

01:35:15 19 A. He is.

01:35:16 20 Q. And is he also an employee of the

01:35:18 21 company?

01:35:22 22 A. No.

01:35:23 23 Q. So, he's an outside director?

01:35:24 24 A. He is.

01:35:25 25 Q. How long has he been a member of the

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01:35:16 2 A. No.

01:35:18 3 Q. So, he, too, is an outside director?

01:35:20 4 A. He is.

01:35:20 5 Q. And where is he located?

01:35:25 6 A. In Michigan.

01:35:29 7 Q. And do you know the town that he's in,

01:35:31 8 in Michigan?

01:35:32 9 A. Dearborn? uh, no.

01:35:34 10 Q. Is it Grand Rapids?

01:35:35 11 A. Grand Rapids. Grand Rapids.

01:35:36 12 Q. Any other members of the Compensation

01:35:38 13 Committee?

01:35:40 14 A. Mr. Richard Shorten.

01:35:43 15 Q. Is he, too, a member of the board of

01:35:46 16 directors?

01:35:47 17 A. He is.

01:35:48 18 Q. And has he, too, been a member of the

01:35:50 19 Comp Committee and the board of directors since

01:35:52 20 2003?

01:35:53 21 A. He has.

01:35:54 22 Q. Is he an employee of the company?

01:35:56 23 A. He is not.

01:35:58 24 Q. And where is Mr. Shorten located?

01:36:00 25 A. New Canaan, Connecticut.

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William LaPerch

Is it possible to take a break?

MR. WEINSTEIN: Yes.

(Recess held from 11:32 to 12:43 a.m.)

MR. WEINSTEIN: Can you read back the

last question and answer.

(Record read)

CONTINUED EXAMINATION BY MR. WEINSTEIN:

Q. So, you've identified at this point, Mr. Shorten -- as was just read back to us -- Mr. Postma, and Mr. Subornick.

Were there other members of the Compensation Committee?

A. No.

Q. So, it was those three?

A. Yes, sir.

Q. I want to show you a document marked at a prior deposition. It was marked as Plaintiff's Exhibit I8, and it's a document entitled "AboveNet, Inc. Meeting of the Board of Directors, September 8, 2008." And it's a document consisting of five pages, and it was produced by your attorneys.

(Hanging)

(Witness peruses exhibit)

Do you recognize this document?

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William LaPerch

A. I recognize these as board minutes.

Q. And these are the minutes for a meeting that took place on September 8th, 2008; correct?

A. Correct.

Q. And it indicates that certain members of the board of directors participated by means of telephonic equipment; correct?

A. Correct.

Q. And you're listed as one of those directors that participated by telephonic equipment; correct?

A. Everybody participated by telephonic equipment.

Q. Is that typically the way these things were done? It was not an in-person meeting, but it would be by telephone?

A. It varied.

Q. So, the reference in the second paragraph, "Also participated by invitation," and the folks identified there, that doesn't mean that they were participating in person; it just means that they were participating by invitation, as well by telephone; is that correct?

A. That's correct.

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William LaPerch

Q. Okay. Now, this meeting, as reflected in the minutes, was a meeting where there was a discussion regarding a potential award under the terms of the Equity Incentive Plan; correct?

A. Correct.

Q. And if you look at the bottom of the page, it says, "Mr. Sokola reviewed the previously circulated spreadsheets containing recommended equity grants to certain employees."

A. I'm sorry. Bottom of page, what?

Q. I'm sorry; I didn't realize you weren't there. Bottom of the first page.

A. Got it.

Q. "Mr. Sokola reviewed the previously circulated spreadsheets containing recommended equity grants to certain employees under the 2008 Equity Incentive Plan. The spreadsheet provided for grants in varying amounts of restricted stock units, depending on the employee level."

Do you recall that presentation by Mr. Sokola?

A. I don't recall it specifically, but that is generally what he did in these situations.

Q. And the spreadsheet that provided for COMPU-TRAN SHORTHAND REPORTING

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William LaPerch

grants, would that be a spreadsheet that reflected your recommendation as to your direct reports?

A. It would.

Q. And that would include Mr. Jendras; correct?

A. It would include Mr. Jendras, yes.

Q. And this meeting, as memorialized in the minutes, reflects an approval, does it not, for a stock award to Mr. Jendras; correct?

A. I would assume so, yes.

Q. Well, if I can direct your attention to the second page, there is a reflection of a resolution; correct?

A. Yes.

Q. And that resolution at the bottom of the page reads, "Resolved." Then, for the stock units granted to each of the senior vice presidents on Schedule A, Doug Jendras -- the other names are redacted: "30 percent shall vest on September 8th, 2009, and delivered on November 16th, 2009. Ten percent shall vest on September 8th, 2010, and be delivered on November 15th, 2010. And 60 percent shall vest on September 8th, 2011, and be delivered on November 15th, 2011."

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William LaPerch

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2 That's a reference to a stock award to
3 Mr. Jendrias; correct?
4 A. Correct.
5 Q. And that's a reflection of the vesting
6 schedule for that stock award; correct?
7 A. Correct.
8 Q. And subsequent to the board's meeting
9 and adoption of this stock award, was Mr. Jendrias,
10 to your knowledge, provided with a stock award
11 agreement reflecting this vesting schedule?
12 A. I don't know.
13 Q. Would that have been the typical
14 procedure?
15 A. Yes.
16 Q. Let me show you a document that was
17 marked as a direct deposition as Plaintiff's
18 Exhibit 19. (Handing) And it's a document entitled
19 Stock Unit Agreement, and it says "Stock Unit
20 Agreement Effective as of September 8th, 2009."
21 I want you to take a moment to look at
22 this, please.
23 (Witness reviews exhibit)
24 A. Okay.
25 Q. Do you recognize this document?

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William LaPerch

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2 Q. Does that mean you were familiar with a
3 form of agreement that was used to memorialize an
4 award if it was addressed by the board of directors?
5 A. Yes.
6 Q. So, would it be fair to say you saw
7 this form of agreement before it was executed by
8 Mr. Jendrias or any other officer who was the
9 beneficiary of a stock award?
10 A. Yes.
11 Q. And were you asked to comment on the
12 terms memorialized in the form of the Stock Unit
13 Agreement?
14 A. Don't recall.
15 Q. And are you aware of what, if anything,
16 the Stock Unit Agreement says regarding the vesting
17 of stock units if an employee is terminated without
18 cause?
19 A. I just read what's in Section b on the
20 second page, and I was familiar with that beforehand,
21 as well.
22 Q. And since you've identified it on the
23 second page, Paragraph db says, "upon the
24 termination of the participant's continuous service
25 by the company without cause, or by the employee for

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William LaPerch

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2 A. I do.
3 Q. Can you identify it, please.
4 A. It's a Stock Unit Agreement for
5 Doug Jendrias.
6 Q. And is this, in fact, the Stock Unit
7 Agreement incorporating the terms that were addressed
8 by the board of directors at their meeting on
9 September 8th, 2008?
10 A. It appears to do, yes.
11 Q. And in fact, this reflects the vesting
12 schedule that was the subject of the resolution set
13 forth in the minutes of the meeting of the board of
14 directors for September 9th, 2009; correct?
15 A. Correct.
16 Q. And did you see this Stock Unit
17 Agreement before it was executed?
18 A. What do you mean by "see"?
19 Q. Well, before this agreement was signed
20 by Mr. Jendrias and what appears to be Mr. Sokota's
21 signature, were you asked to look at it before it
22 was signed?
23 A. I was not asked to look at this
24 specific document. I was familiar with a Stock Unit
25 Agreement.

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William LaPerch

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2 good reason, any unvested stock units shall
3 immediately vest."
4 You were aware of that provision;
5 correct?
6 A. Yes.
7 Q. And so, that would mean that to the
8 extent that there was any restricted stock units
9 that were scheduled to vest at a later date, they
10 would vest immediately if and when an employee was
11 terminated without cause; correct?
12 A. Yes.
13 Q. Now, had you discussed that particular
14 term before its inclusion in the form of the Stock
15 Award Agreement with anybody else at Abovener?
16 A. Don't recall.
17 Q. Did you make any additional
18 recommendations for stock awards to Mr. Jendrias,
19 subsequent to the award memorialized in this Stock
20 Award Agreement that I just showed you for
21 September 8th, 2008?
22 A. Yes.
23 Q. Do you recall when you did that?
24 A. No.
25 Q. I want to show you a document that was

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William LaPerch

1 marked at a deposition as Plaintiff's
 2 Exhibit 20. (Handing) This, too, is a document
 3 that was produced by your attorneys in response to
 4 our request for production and the first page says,
 5 "Adopted meeting of the board of directors
 6 December 20th, 2d Id."
 7 Why don't you take a moment to look at
 8 it before I ask you to identify it, please.
 9 (Witness peruses exhibit)
 10 A. Okay.
 11 Q. Can you identify the document?
 12 A. It's a document that outlines the
 13 meeting of the board of directors on December 20th,
 14 2010. It outlines various actions that the board
 15 was taking at that time relative to additional stock
 16 grants based on a \$5.00 per share dividend that was
 17 awarded in December of that year.
 18 Q. And were you present at this meeting?
 19 A. I was.
 20 Q. And I say, "present." I'm looking at
 21 a notation, "Minutes of the telephonic meeting."
 22 Would it be fair to say this meeting
 23 also was a telephonic meeting?
 24 A. It was.

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1 Q. So, your addressee was by telephone;
 2 is that correct?
 3 A. It was.
 4 Q. As was everybody else's; is that
 5 correct?
 6 A. Yes. Well, everybody else's except for
 7 those people that were in the room with me,
 8 listening to the telephone.
 9 Q. Okay. That's a good point. And if I'm
 10 not mistaken, we really can't tell from this set of
 11 minutes (who was present with you. Am I correct in
 12 that observation?
 13 A. You're correct that you can't tell from
 14 these minutes who was present with me, yes.
 15 Q. Do you know who was present with you at
 16 the time this meeting took place?
 17 A. Yes. To the best of my knowledge, it
 18 was Rod Sokota, Joe Clayarella and Joe Sanford.
 19 Q. Now, you indicated previously in
 20 response to a question that I asked that, typically,
 21 the Compensation Committee would meet shortly before
 22 the board of directors met with regard to a proposed
 23 award of restricted stock units; correct?
 24 A. That often happened. I can't give you

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1 a percentage, but it often happened, yes.
 2 Q. And was the meeting of the members of
 3 the Compensation Committee conducted telephonically,
 4 as well?
 5 A. Yes.
 6 Q. And so, when you made your presentation,
 7 you were making this presentation to the members of
 8 the Compensation Committee telephonically; is that
 9 correct, sir?
 10 A. That's correct.
 11 Q. And in connection with the
 12 recommendations you would make, had you provided
 13 them documentation in advance of the telephonic
 14 meeting regarding your proposed awards?
 15 A. For this specific meeting?
 16 Q. Well, I'm asking in general.
 17 A. In general, yes; I would provide, in
 18 advance, a copy of my proposed recommendations.
 19 Q. And what form did that recommendation
 20 take? Was it a spreadsheet, or was it some other
 21 form?
 22 A. It was a spreadsheet. Occasionally,
 23 I might attach some -- no, it was a spreadsheet.
 24 I don't recall doing any PowerPoint presentations

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1 For this, I would talk to it, and it would be --
 2 my comments would be reflected in the minutes.
 3 Q. So, it would be a spreadsheet
 4 reflecting the names of the proposed recipients,
 5 among other things; is that correct?
 6 A. That's right.
 7 Q. And would it also include the proposed
 8 number of restricted stock units to be awarded to
 9 the recipient?
 10 A. That would be included, yes.
 11 Q. And would it include a proposed vesting
 12 schedule?
 13 A. Not sure.
 14 Q. And was the spreadsheet an Excel
 15 spreadsheet?
 16 A. It was.
 17 Q. And was that something that would be
 18 prepared using your PC, or someone prepared it for
 19 you?
 20 A. Someone prepared it for me.
 21 Q. And did the company retain a record of
 22 the document where this information was stored?
 23 A. The Excel spreadsheet was retained by
 24 the company, yes.

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Q. And does it still exist?

A. Does what still exist?

Q. Does the document still exist somewhere

at AdobeNet regarding the --

A. For this specific year?

Q. Yes.

A. I assume so, yes.

MR. WEINSTEIN: I'm going to call for the production of any spreadsheets that were presented at board meetings, where any stock awards were the subject of discussion and/or approval as it pertained to Mr. Iendias.

MR. DEIKES: We'll take it under advisement.

MR. WEINSTEIN: Okay.

DOCUMENT/DATE REQUESTED: _____

Q. So, redirecting your attention to the minutes that you have in front of you, there is an indication, is there not, of a recommendation you made relating to an award for Mr. Iendias; correct?

A. Correct.

Q. And that award was identified in a portion of these minutes as part of what was set forth as Schedule B; correct? If you could turn

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So that the number 1,719 reflects a

disposed grant of restricted stock units to

Mr. Iendias; is that correct?

A. It does.

Q. And that was what was addroyed, was it not, by the board of directors when it met on December 20th, 2010; correct?

A. Correct.

Q. And before the board of directors met that day, the Compensation Committee had already addroyed this; correct?

A. That's what generally happens, yes.

Q. And it indicates that the vesting and delivery date was November 15th, 2011; correct?

(Witness peruses exhibit)

A. Is that annotated in these minutes somewhere that you can point me to?

Q. I just want you to answer the best you can. I'll try and help you with that if I could.

A. The vesting delivery date on this sheet is indicated as 11/15/11.

Q. And I gather from your response, you're not sure, just from looking at this schedule,

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to -- and just let me see if I can help you get there. It's a document Gates standard D362.

(Witness peruses exhibit)

A. b362 reflects a grant as being added to outstanding RSUs that had been previously awarded that come as a result of the \$5.00 a share dividend that was being offered to our shareholders in December.

Q. If you look at the column, "Disposed Grant" -- do you see that there?

A. Yes.

Q. Is that a column intended to reflect the amount of restricted stock units that were the subject of a proposed grant?

A. That is intended to reflect the value of the \$5.00 a share dividend that we were offering our shareholders.

Q. So, if you look down below, there's a number, 3,335. Do you see that there?

A. I do.

Q. And is that a dollar amount as opposed to a number reflecting stock units?

A. It's a share amount.

Q. Okay; that's what I thought.

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whether or not that was intended to reflect the vesting and delivery date for the 3,719 shares; is that correct?

A. Can you restate your question, please.

MR. WEINSTEIN: Can you read it back, please.

(Question read)

A. It's my understanding that the 11/15/11 represented the vesting date for the 42,000 shares.

Q. And on what do you base that conclusion?

A. Recollection.

Q. And as long as you mentioned it, you point out that there's a number 42,000 that appears underneath the column, "Outstanding RSUs as of 2010." Do you see that there?

A. Yes.

Q. And that would appear to be a reference to what was outstanding as of --

A. December 20th.

Q. -- as of December 20th, 2011, and the number 42,000, would appear, reflects what was already the subject of an earlier award to Mr. Iendias; correct?

A. Correct.

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Q. And perhaps I should've shown this to you before, but if I can redirect your attention to the minutes of September 9th, 2008.

A. Yes.

Q. That should be there. Do you have it there?

A. Yes.

Q. If I can direct your attention to the last page. That reflects, does it not, a number for the stock units that were the subject of approval by the board on September 9th, 2009; correct?

A. That's what the document says, yes.

Q. It says, "35,000;" correct?

A. Yes.

Q. And can you explain how, as of December 20, 2010, there were 42,000 units that were outstanding if the award that was approved in September, 2008, was 15,000?

A. Ho.

Q. Did the stock split?

A. The stock did split, yes.

Q. And did it split two to one?

A. Two for one, yes.

Q. So that the 15,000 became 30,000;

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correct?

A. Correct.

Q. And it would appear that in December of 2010, of that 30,000, there remained 42,000 units that had not yet vested; correct?

A. That's what it appears, yes.

Q. Now, let me also show you another document that was marked at a prior deposition as Plaintiff's Exhibit 22. Handing it. That document was also produced by your attorneys, and it says "AbouNei, Inc. Meeting of the Board of Directors, January 25, 2011."

Would you take a moment to look at this. I'm going to ask you whether you recognize this document.

(Witness peruses exhibit)

A. I recognize it.

Q. And can you identify it, please.

A. These are the meeting minutes from our board of directors meeting that was held, in person, in White Plains on January 25, 2011.

Q. And were you present at that board of directors meeting?

A. I was.

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Q. And was the purpose of this meeting, as memorialized in these minutes, to address a proposed stock unit award?

A. That was one of the purposes, yes.

Q. And prior to the meeting of the board of directors to take up, among other things, a proposed stock award to various proposed recipients, had the Compensation Committee met?

A. The minutes indicate that they had, yes.

Q. And were you present when the Compensation Committee discussed proposed awards of restricted stock units?

A. Yes.

Q. And did you, as you had on prior occasions, make a presentation setting forth your recommendation regarding the various recipients of those stock unit awards?

A. I never said I made a presentation. I provided some context, and they're reflected in the board meeting minutes.

Q. Okay. Well, we'll use your choice of words. You said you provided context; is that correct?

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A. Yes.

Q. And how did you do that, sir?

A. I would usually start off by telling the board my view of what kind of year the company had, and how these stock units were an important part of retaining our talent on a going-forward basis.

Q. And would you then provide a specific recommendation relating to particular individuals, who you proposed as individuals who merited the receipt of certain stock unit awards?

A. The board and the Compensation Committee both had, in their possession, the spreadsheets that indicated my approved recommendations.

Q. And that spreadsheet was something you had created before the Compensation Committee met; correct?

A. That was created, I didn't create it myself; I reviewed it. It was created for me.

Q. And when you say it was created for you, did it contain the particulars of what you were going to propose regarding the amount of stock units to be awarded and the names of the recipients of

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those awards?

A. It did.

MR. WEINSTEIN: And as with my request previously, I'm going to ask that that spreadsheet be provided to me, assuming it does exist.

MR. DEIKES: Same response; we'll look into it.

DOCUMENT/IDATA REQUESTED: _____

Q. And so, at the point in time when you would be meeting with the Compensation Committee, they would've received from you the spreadsheet; correct?

A. They received it from someone else.

Q. And who was the someone else?

A. Rob Sokota.

Q. And Mr. Sokota was acting at your direction, I presume?

A. Yes.

Q. And would the spreadsheet also contain a proposed schedule for vesting?

A. I don't recall.

Q. Would it set forth the terms of the stock unit award, as well?

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A. Ho.

Q. Would it cadulire, in any way, the terms of the stock unit award?

A. Ho.

Q. So, redirecting your attention to the minutes of the board of directors on January 25, 2011, you observed that this was a meeting that took place at the company's headquarters in White Plains; correct?

A. Correct.

Q. Were the members of the Compensation Committee present, as well, for this meeting?

A. Yes, to the best of my recollection.

Q. And was this meeting in person because it occurred at the beginning of the year, or was there some other reason why it was in person?

A. We -- we had a certain number of meetings that were telephonic, a certain number that were in person.

Q. And you mentioned that one of the purposes of this meeting was to act on a recommendation you had made with respect to the award of restricted stock units to certain individuals.

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Was one of those individuals

Mr. Iendras?

A. Yes.

Q. And do you recall what you recommended at the meeting of the Compensation Committee as the award to be made to Mr. Iendras?

A. According to these minutes, I recommended 35,000 shares -- 21,000 shares.

Q. Right. And if you look at Schedule A, does that reflect accurately the recommendation you made with respect to Mr. Iendras?

A. To the best of my recollection, yes.

Q. And that reflects a proposed grant of 21,000 units; correct?

A. Correct.

Q. And it also reflects a vesting schedule relating to those units; correct?

A. Correct.

Q. And that vesting schedule reflected 16.66 percent vesting and delivered on

November 16th, 2012, and 13.11 percent vesting and delivered on November 16th, 2011; correct?

A. Correct.

Q. And the board, in fact, approved this

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proposed award; correct?

A. They did.

Q. And to your knowledge, was the award that you recommended and was approved by both the Compensation Committee and the board, subsequently reduced to a written document?

A. This is the written document.

Q. Was there a written Stock Award Agreement that was drafted?

A. Yes.

Q. And was that prepared after this meeting?

A. Yes.

Q. And who drafted it?

A. Mr. Sokota.

Q. And what did Mr. Sokota utilize for the purpose of preparing the stock unit award agreement that was approved at the meeting of the board of directors on January 25, 2011?

A. I don't understand your question.

Q. Who provided Mr. Sokota with the terms that he was to include in the written stock unit award agreement?

A. The company's equity plan, 2008 equity

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1 dian.
 2 Q. Did anyone discuss Mr. Sokola with
 3 information relating to what was to be included in
 4 the agreement that he was drafting to memorialize
 5 the terms of the award?
 6 A. The board minutes had the number of
 7 RSUs to be awarded.
 8 Q. So, he relied, then, on what had been
 9 the subject of the approval at the Board meeting;
 10 correct?
 11 A. You'll have to ask Mr. Sokola that
 12 question.
 13 Q. Okay. But you didn't provide any
 14 independent input regarding what was to be set forth
 15 in the agreement, itself; is that correct?
 16 A. I did not.
 17 Q. And do you know whether Mr. Sokola
 18 subsequently prepared a Stock unit agreement
 19 reflecting the terms of the award that had been
 20 approved by the board of directors on January 25,
 21 2011?
 22 A. I know he prepared one for me.
 23 Q. Do you know if he prepared one for
 24 Mr. Iendras?
 25

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1 A. I assume so.
 2 Q. I gather from your answer he didn't
 3 show it to you before it was sent to Mr. Iendras;
 4 is that correct?
 5 A. That's correct.
 6 Q. Let me just show you, before I ask you
 7 some questions about the Stock Unit Agreement
 8 prepared by Mr. Sokola, with respect to the decision
 9 of the board of directors on January 25, 2011, to
 10 look at a document that was marked as a prior
 11 deposition as Plaintiff's Exhibit 21. (Handing)
 12 And this is a document entitled "Stock Unit
 13 Agreement."
 14 Do you recognize this document?
 15 (Witness peruses exhibit)
 16 A. I do.
 17 Q. Can you tell me what it is, please?
 18 A. It's a Stock Unit Agreement for
 19 Doug Iendras.
 20 Q. And does this contain the terms of the
 21 award that was approved by the board of directors on
 22 December 10th, 2010?
 23 A. I don't know how to answer that
 24 question without going back and combing it to
 25

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1 others.
 2 Q. Let me redirect your attention to the
 3 minutes that reflect the decision of the board of
 4 directors on December 20th, 2010, and ask you
 5 whether the number of units - 1,719 - reflected on
 6 page one of Plaintiff's Exhibit 21, is consistent
 7 with what is set forth on Schedule 9 to those
 8 minutes as the amount of the award approved to
 9 Mr. Iendras.
 10 (Witness peruses exhibit)
 11 A. Yes, it is.
 12 Q. And with respect to the terms of this
 13 award as memorialized in this agreement --
 14 A. Which do you mean by "this"?
 15 Q. The document that you have in front of
 16 you that I presented to you that has been marked
 17 previously as Plaintiff's Exhibit 21. If I can
 18 direct your attention to the second page of this
 19 document; and specifically, paragraph 4D. There's
 20 a reference there to vesting of the unvested stock
 21 units in the event of a termination without cause.
 22 Do you see that there?
 23 A. I do.
 24 Q. And that indicates that in the event of
 25

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1 a termination without cause, any unvested stock
 2 units would immediately vest; correct?
 3 A. Correct.
 4 Q. And was that consistent with your
 5 understanding of the terms of the award made to
 6 Mr. Iendras?
 7 A. Yes.
 8 Q. And was it also consistent with the
 9 terms of the award made to other residents at that
 10 time?
 11 A. Yes.
 12 Q. Let me show you a document that was
 13 marked previously at another deposition as
 14 Plaintiff's Exhibit 23. (Handing) This is a
 15 document that was produced by your attorneys, and
 16 it's entitled "Stock Unit Agreement." And after
 17 you've had a chance to look at it, let me know.
 18 I'm going to ask you some questions about it.
 19 (Witness peruses exhibit)
 20 A. Okay.
 21 Q. Do you recognize the document?
 22 A. It's a Stock Unit Agreement dated
 23 January 25th between the company and Doug Iendras,
 24 for 21,000 shares.
 25

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Q. And does this reflect the terms of the Stock Unit Agreement that had been approved by the board of directors at its meeting on January 25, 2011?

A. Yes.

Q. And does this contain the award that was, in fact, recommended by you for approval at both the Compensation Committee and the board of directors on January 25, 2011?

A. Yes.

Q. And had you seen this agreement before it was presented to Mr. Iendras?

A. I've seen this Stock Unit Agreement many times. I did not see the one that had brought particular information on it.

Q. Were you aware of the terms of the agreement as it related to accelerated vesting?

A. Yes.

Q. And were you aware that the terms of this agreement that I've presented to you, like the earlier awards to Mr. Iendras, had a provision that provided that any unvested stock units would immediately vest if Mr. Iendras was terminated without cause?

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Q. And with respect to the Stock Unit Agreement memorialized in the January 25, 2011, Stock Award Agreement, was that set forth in any public disclosure?

A. We made all required public disclosure; so, I assume so.

Q. But you don't know for certainty, one way or the other, as you're sitting here?

A. Ho; I know for certain we made all the required disclosures.

Q. So that Mr. -- the terms of Mr. Iendras' award were, in fact, disclosed in a public filing with the SEC; is that correct?

A. Yes.

Q. And was that disclosure consistent with the terms that were set forth in the document I just showed you that are the Stock Award Agreement for Mr. Iendras for January 25th, 2011?

A. Yes.

Q. And was that disclosure made in a form 10-K?

A. I don't know if it was a 10-K or 9-K.

MR. WEHSTEIN: Let's mark this collectively -- and I have a rudder band

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A. Yes.

Q. And were those provisions consistent with the provisions in other individuals' form of agreement?

A. Yes.

Q. And looking at this agreement, does it also reflect accurately the vesting schedule that had been approved at the board of directors meeting on January 25, 2011?

A. Yes.

Q. It reflects that 14,000 units -- which was two-thirds; correct?

A. Correct.

Q. -- of the award would vest on November 16th, 2012, under normal circumstances; and 7,000 units would vest, under normal circumstances, on November 16th, 2011; correct?

A. Correct.

Q. Now, you had indicated earlier in response to some questions I asked, that the terms of any stock award to an officer of the company would be the subject of disclosure in a filing with the SEC; correct?

A. Correct.

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around it that may have inflicted a little bit of damage here -- as Plaintiff's Exhibit 41, please.

(Whereupon, AboyeNet, Inc. 10-K Annual Report Pursuant to Section 13 and 15(d) Filed on 3/01/2011, filed period 12/31/2010, was marked as Plaintiff's Exhibit 43, for id.)

Q. Mr. LaPerch, I'm going to show you what has been marked as Plaintiff's Exhibit 43. And for the record, it's a document entitled "AboyeNet, Inc. 10-K," and it reflects on the cover page "Annual Report Pursuant to Section 11 and 15(d) Filed on 1/1/2011, filed period 12/31/2010." (Handling I'm going to ask you if you recognize this document.

(Witness peruses exhibit)

A. Yes, I do.

Q. And what is it, please, sir?

A. It's the AboyeNet 10-K.

Q. And did you review this document before it was filed with the SEC?

A. I did.

Q. And did you verify its accuracy?

A. I did.

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Q. I want to direct you to the second-to-last page of this document.

(Witness peruses exhibit.)

Q. Do you see that document there?

A. I do.

Q. Does that reflect your certification of the accuracy of what was contained in the 10-K?

A. Yes.

Q. And you, in fact, signed it before it was filed with the SEC?

A. I did.

Q. And in signing it, you were representing that the statements contained in the 10-K were true and accurate; correct?

A. Correct.

Q. And you were making that certification with the knowledge that anyone reading the 10-K, would rely on it; correct?

A. Yes.

Q. And was the 10-K true and accurate?

A. To the best of my knowledge, yes.

Q. I want to direct your attention to Exhibit 10.61 of this document, which should be page 145 or references page 145.

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(Witness peruses exhibit.)

A. Got it.

Q. There's a reference, is there not, to the form of Stock Unit Agreement for January 25, 2011; correct?

A. Yes.

Q. And it indicates, "Grants incorporated herein by reference to Form 8-K filed with the Securities and Exchange Commission on January 28th, 2011; correct?"

A. Correct.

Q. So, that the exhibit identified as 10.61 was the identical form of agreement for January 25, 2011, that formed part of the 8-K filed on January 28th, 2011; correct?

A. I don't know.

Q. Well, you do know what this says; correct?

A. Correct.

Q. And this incorporated whatever form of agreement was set forth in the 8-K as 10.61 in the 10-K; correct?

A. Correct.

Q. Let me show you a document that was

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previously marked as Plaintiff's Exhibit 24. And just to make sure that I didn't cause further havoc with that exhibit --

A. Okay. (Handing.)

Q. Thank you very much.

I'm going to show you what was marked previously as Plaintiff's Exhibit 2d. (Handing.) Is that, in fact, the 8-K that was filed on January 28th, 2011, with the SEC?

(Witness peruses exhibit.)

A. Yes.

Q. And let me direct your attention to Exhibit 10.7, which is the -- I hope -- the third-to-last page of this document, which should have a Bates stamp 217 on it.

Let me know when you're there.

A. 2177

Q. 217.

A. Yes.

Q. Okay. This exhibit is a Stock Unit Agreement. And is that, in fact, the Stock Unit Agreement that was the form of Stock Unit Agreement adopted by the Board of Directors for awards made on January 25th, 2011?

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A. It appears to be, yes.

Q. And directing your attention to paragraph 4D, that contains the provision I asked you about earlier -- that there would be an immediate vesting of any unvested stock units if and when an employee's service with the company was terminated without cause; correct?

A. Correct.

Q. Did AdobeNet, to your knowledge, have an employment manual setting forth the policies of AdobeNet?

A. We had a code of conduct.

Q. As you're sitting here today, did you know whether there was an employment manual?

A. We had -- we had a manual that outlined -- yeah, I mean, HR had a manual.

Q. Let me show you a document that was marked at a prior deposition as Plaintiff's Exhibit 2S. (Handing.) And I'm going to ask you to look at it and tell me whether you recognize it.

(Witness peruses exhibit.)

A. It's an AdobeNet Employee Handbook.

Q. And it's a document that was produced by your attorneys.

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Does this set forth the policies of

Abouche as of the time that the document was in existence?

A. It sets forth policies and guidelines, yes.

Q. And if I could direct your attention to the second page of this document, the bottom of that page, it indicates that it was drafted by Abouche human resources department, and it indicates it's a 2010 Version 2. September, 2010. Do you see that there?

A. I do.

Q. Do you know if there were any subsequent versions of this document?

A. I don't.

Q. And it would be fair to say that this document certainly appeared to be the document in place as of September, 2010; correct?

A. Yes, that's what it says.

Q. And do you know whether Abouche, as of this time, had a policy regarding telecommuting?

A. Yes.

Q. And what was that policy?

A. In very general terms, it was a policy

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correctly, if there was an approval by the

employee's supervisor, telecommuting would be permitted; is that correct?

A. That was one of the criteria.

Q. And what was the other criteria?

A. It had to benefit the company. There was -- you know, we were in a position where, for some people, working at home was -- the person could still be as effective as they were working in the office. In other cases, that wasn't the case. So, we -- you know, there had to be some benefit to the company, as well.

Q. And who would make the decision in any particular instance whether there was a benefit to the company?

A. Supervisor.

Q. And other than the supervisor, was anyone else asked to pass upon a proposed telecommuting agreement?

A. ITR was consulted, but they were not the -- they were not the approving authority.

Q. And what, if any, understanding did you have as to what form, if any, an agreement would take if and when the supervisor approved a proposed

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that indicated that some employees had the opportunity to spend all or part of their work time at home, subject to getting the necessary approvals in place.

Q. And so, telecommuting was something that was permitted under certain circumstances by Abouche; is that correct?

A. Yes.

Q. And were there employees of the company who, in fact, entered into telecommuting agreements?

A. There were.

Q. And did you have an understanding as to the procedure by which a telecommuting agreement was to be requested and approved?

A. Yes.

Q. And what was your understanding?

A. It was the responsibility of the person that was going to do the telecommuting to work with their supervisor and come up with terms and conditions that were acceptable to the company and to that person, by which that person could telecommute. And then there was some paperwork to fill out and human resources to memorialize that.

Q. And if I understand your response

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telecommuting arrangement?

A. It and when a supervisor approved a telecommuting agreement, we -- they had to have an understanding with their supervisor on how it was going to work. That was the primary consideration.

Q. And would that understanding be memorialized in some fashion?

A. I think that would have been good practice, yes.

Q. Is that what happened, to the best of your knowledge, in each and every situation where there was a proposed telecommuting agreement?

A. There were too many for me to comment on.

Q. So, you don't know, as a general rule, whether it was memorialized or not, sir?

A. I don't know as a general rule if the understanding between each individual and their supervisor was memorialized. I --

Q. Did you have -- I'm sorry; you didn't finish.

A. No, I did.

Q. Did you ever have occasion, in your role as a supervisor, to discuss a potential

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2 telecommuting arrangement with any of your direct
3 reports?

4 A. Yes.

5 Q. And could you tell me, who were those
6 individuals that you had those discussions with?

7 A. I had a discussion with my
8 administrative assistant, Gina Thomas, who, de
9 because of family obligations, arranged to work
10 every day in the office until approximately 2:00 or
11 2:30, spend her lunch hour traveling home, and then
12 work remotely from 2:30 until 5:30.

13 Q. And with respect to Ms. Thomas, when
14 she embarked on this arrangement, did she first
15 approach you to discuss the arrangement?

16 A. Yes.

17 Q. And when did she have that discussion
18 with you?

19 A. She was considering leaving the company.
20 The discussions occurred, I would say, probably
21 around 2009.

22 Q. And up until that point, she was
23 present at the office during the entire hours of her
24 designated workweek; is that correct?

25 A. That's correct.

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2 Q. And is she still telecommuting today?

3 A. She is.

4 Q. Let me direct your attention to what
5 is page 10 of this document.

6 (Witness peruses exhibit)

7 Are you there, sir?

8 A. I am.

9 Q. This page has a heading entitled
10 "Telecommuting Policy." Do you see that there?

11 A. I do.

12 Q. And the second full paragraph
13 underneath that heading, I want to direct your
14 attention to the third-to-last sentence of that
15 paragraph: It begins with the words, "If an
16 employee..." Do you see that there?

17 A. Yes.

18 Q. That reads, "If an employee wishes to
19 request a telecommuting arrangement, he/she should
20 contact his or her supervisor and discuss the
21 possibility. A telecommuting agreement should
22 subsequently be drawn up with the assistance of a
23 representative of MR."

24 I assume that refers to human
25 resources; correct?

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2 Q. She would've been there beyond 2:10,
3 I gather?

4 A. Yes.

5 Q. And the discussions she had with you,
6 was it ever reduced to a written document?

7 A. No.

8 Q. So, the approval was something that was
9 done verbally; is that correct, sir?

10 A. Yes.

11 Q. And to the extent that you had arrived
12 at this agreement with her, it was something that
13 was arranged between you and her on a verbal basis;
14 is that correct?

15 A. It was.

16 Q. There was nothing prepared in writing,
17 then; is that correct?

18 A. Not that I recall.

19 Q. Were there any other of your direct
20 reports that discussed a potential telecommuting
21 arrangement?

22 A. No.

23 Q. So, the one instance you had involved
24 Ms. Thomas?

25 A. Yes.

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2 A. It does.

3 Q. Now, I gather from your testimony
4 regarding Ms. Thomas, that, notwithstanding the
5 provisions of the manual, there was no telecommuting
6 agreement drawn up with regard to her arrangement
7 with the assistance of an MR representative;
8 correct?

9 MR. DEIKES: Objection to the form.

10 A. I don't know.

11 Q. You're not aware of one, though; are
12 you? Is that correct?

13 A. I — I informed MR of the arrangement
14 that I had with Gina, and I couldn't tell you if
15 they memorialized it in a document or not.

16 Q. And you don't recall seeing one,
17 either; is that correct?

18 A. I don't recall seeing one.

19 Q. And you don't recall drafting one; is
20 that correct?

21 A. I didn't prepare one, no.

22 Q. And I think you indicated your
23 understanding of how it worked was that it was a
24 verbal arrangement; correct?

25 A. No, I didn't say that. I said it was

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2 discussed verbally between the supervisor and the
3 employee, and that an agreement had to come forth.
4 And there were -- there was this policy in MR, where
5 a telecommuting form needed to be filled out.

6 Q. Do you know if one was filled out in
7 the case of Ms. Thomas?

8 A. I do not know.

9 Q. You don't know whether it was or it
10 wasn't; is that correct?

11 A. That's correct.

12 Q. And as you're sitting here today, have
13 you ever seen such a written telecommuting agreement?

14 A. For Ms. Thomas?

15 Q. Yes.

16 A. I have not.

17 MR. WEINSTEIN: I'm going to call for
18 the production of that document if it
19 exists, or some representation that it
20 doesn't exist.

21 MR. PEIKES: Of the telecommuting
22 agreement, if there is one, with Gina Thomas?

23 MR. WEINSTEIN: Yes.

24 MR. PEIKES: I'll take it under
25 advisement. I can't see what the possible

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2 A. I don't know the address.

3 Q. Did Mr. LaQuay discuss with you his
4 desire to work primarily out of the Phoenix
5 location?

6 A. No.

7 Q. Do you know if he discussed it with
8 anybody?

9 A. No, I don't know.

10 Q. Do you know if there was a partial
11 office to which he was expected to report?

12 A. My expectations of him were to spend
13 as much time in the field at sales offices, as
14 possible.

15 Q. Was there an office, though, where he
16 had a primary location?

17 A. There was a small office in Phoenix.
18 I don't recall the address.

19 Q. And other than him, was there anybody
20 else situated at that office?

21 A. There were a couple of field ops guys
22 that were assigned to that office.

23 Q. Did Jeff Roik have a telecommuting
24 agreement?

25 A. Yes.

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2 relevant would be, but I'll make a note.

3 MR. WEINSTEIN: Well, as you know,
4 under the applicable rules, the definition
5 of what's appropriately produced is rather
6 expansive. And we won't debate it now, but
7 I'm asking for it.

8 MR. PEIKES: It's expansive, but not
9 unlimited.

10 MR. WEINSTEIN: Okay.

DOCUMENT/DATA REQUESTED:

11 Q. Do you know who John LaQuay is?

12 A. I do.

13 Q. What was his position at the company?

14 A. Senior vice president of sales.

15 Q. And did he ever enter into a
16 telecommuting arrangement?

17 A. Not to my knowledge.

18 Q. Where did he work?

19 A. At a resales office in the company.

20 He spends about 95 percent of his time on the road.

21 Q. Was there an office in Phoenix for the
22 company?

23 A. There was.

24 Q. And where is that office located?

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2 Q. And what was Mr. Roik's title at the
3 company?

4 A. Director of real estate.

5 Q. And who did he discuss a telecommuting
6 arrangement with?

7 A. His supervisor.

8 Q. And who was his supervisor?

9 A. I don't recall who his supervisor was
10 at the time that he entered into the agreement.

11 Q. Do you know when he entered into the
12 agreement?

13 A. No.

14 Q. Do you know where he telecommuted from?

15 A. From his home office in Lake Placid.

16 Q. And when you say "home office," you
17 mean from his home, itself --

18 A. Yes.

19 Q. -- in Lake Placid?

20 A. Yes.

21 Q. And did you have an understanding as
22 to whether the agreement that he reached regarding
23 telecommuting was ever reduced to writing?

24 A. I don't recall.

25 Q. And you don't know who his supervisor

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2 was at the time that he proposed telecommuting; is
3 that correct?

4 A. I don't know who his direct supervisor
5 was at that time.

6 Q. Who was his supervisor before his
7 untimely demise?

8 A. Doug. Mr. Hendies.

9 Q. Mr. Roik, unfortunately, passed away
10 recently; correct?

11 A. Right.

12 I'm sorry; it was Mr. Sokota.

13 Q. And do you know whether the
14 telecommuting arrangement that Mr. Roik established
15 was something that Mr. Sokota had approved?

16 A. I don't know.

17 Q. And you don't know whether there was
18 a written telecommuting agreement, either?

19 A. I seem to recall that Mr. Roik was on
20 a list of people that had approved telecommuting
21 agreements in place.

22 Q. But do you know if that agreement was
23 ever set forth in writing?

24 A. When I saw the list of people that had
25 approved telecommuting arrangements, that was the
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2 Q. And does it exist for the year 2011?

3 A. I would assume so.

4 MR. WEINSTEIN: Okay. I'm talking for
5 the production of that list for the year
6 2011.

7 MR. DEIKES: We'll take a look at it.

8 Objection/DATE REQUESTED: _____

9 Q. You've mentioned, I believe, a
10 gentlemen by the name of Mr. Datta; correct?

11 A. I haven't mentioned him, but I know him.

12 Q. All right. Well, I apologize if you
13 didn't. Maybe I mentioned him.

14 Who is Mr. Datta?

15 A. Presently, the chief operating officer
16 of our company.

17 Q. And when did he become chief operating
18 officer of the company?

19 A. January of 2010.

20 Q. And in January of 2010, where did
21 Mr. Datta have an office?

22 A. In Mahwah, New Jersey.

23 Q. And where does Mr. Datta reside, if you
24 know?

25 A. Ridgewood, New Jersey.

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2 willing.

3 Q. Was there ever an agreement, itself,
4 placed in writing, setting forth the terms that had
5 been approved?

6 A. I don't know.

7 Q. And this list that you've described,
8 can you tell me more about it? What form did it
9 take?

10 A. The list was an HR list of people that
11 had telecommuting arrangements in place.

12 Q. And when would you see this list?

13 A. When I asked for it.

14 Q. When was the last time you saw the
15 list?

16 A. I don't recall.

17 Q. And HR maintains a list with regard to
18 those individuals who have approved telecommuting
19 arrangements; correct?

20 A. That's correct.

21 Q. And they do that each and every year?

22 A. The list is a dynamic list; it's
23 supposed to be kept updated realtime.

24 Q. And does that list still exist?

25 A. To the best of my knowledge, yes.

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2 Q. And the Mahwah office, was that
3 something that had been in existence for some time?

4 A. Two years or so.

5 Q. And whose idea was it to have a Mahwah
6 office?

7 A. Mr. Patte's.

8 Q. And was the reason he wanted an office
9 in Mahwah, was its proximity to his home in
10 Ridgewood?

11 A. Don't know. The reason given to me was
12 that it would be a great place to attract
13 engineering and product development talent from
14 central Jersey, given you didn't have to cross the
15 Teppen Zoo Bridge. And we were seriously talking
16 in engineering and product development talent at the
17 time?

18 Q. So, from your point of view, was the
19 Mahwah location of strategic importance to AboveNet?

20 A. Yes.

21 Q. And other than what you just said,
22 was there any other reason why a Mahwah office was
23 strategically important?

24 A. That was the primary reason.

25 Q. How many people work at the Mahwah

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2 office?

3 A. Don't know the exact number. I would

4 guess somewhere between, I don't know, 15 to 10.

5 Q. And does that remain the case?

6 A. I actually think there's more people

7 there now.

8 Q. Now many people, to the best of your

9 knowledge?

10 A. It -- I think there's 25 people

11 assigned there. There -- many of them are

12 operations PMs, who spend most of their time in the

13 field. So, you know, that may not be the population

14 on any given day.

15 Q. Now, does Mr. Datta still work in

16 Mahwah?

17 A. He does not.

18 Q. Where does he work now?

19 A. White Plains.

20 Q. And when did he start working in

21 White Plains?

22 A. After he became the CEO.

23 Q. And would that have been in January

24 of 2011?

25 A. Not -- not right away. Probably

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2 sometime in the February/March time frame, he moved

3 over.

4 Q. And in fairness to you -- and I'll

5 stand corrected if I'm wrong -- you've indicated,

6 January of 2010. Might it have been possible that

7 you really are talking about 2011?

8 A. Yes, it is possible. I'm sorry. Yes.

9 Yup.

10 Q. So, when you referenced Mr. Datta's

11 appointment, it was January of 2011?

12 A. January of 2011. I'm sorry; right.

13 Time flies.

14 Q. And the --

15 A. And he moved over sometime in the

16 February/March time -- soon after his appointment,

17 he moved over.

18 Q. Of 2011?

19 A. That's right.

20 Q. Now, whose office did Mr. Datta take

21 in White Plains?

22 A. Mr. Tendras.

23 Q. And Mr. Tendras, obviously, had to

24 give up his office -- withdrew.

25 What, if any, understanding, to your

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2 knowledge, existed regarding where Mr. Tendras

3 would work once Mr. Datta took his office?

4 A. That was Mr. Datta's business, not

5 mine.

6 Q. So, you had no involvement with that?

7 A. Right.

8 Q. Did you participate in any discussions

9 relating to where Mr. Tendras would perform his job

10 duties once Mr. Datta took Mr. Tendras' office?

11 A. Discussions I participated in were that

12 it would be his supervisor, Rajiv's, decision on his

13 work arrangement.

14 Q. And so, you didn't have any direct

15 conversations with Mr. Tendras, then, regarding any

16 agreement for the outpouse of telecommuting?

17 A. Not that I feel all.

18 Q. And it was your view that as long as

19 Mr. Datta approved the terms of any telecommuting

20 arrangement, that was okay with you; is that

21 correct?

22 A. Yes.

23 Q. And do you know if Mr. Datta, in fact,

24 arrived at an agreement with Mr. Tendras regarding

25 a telecommuting arrangement?

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2 A. Mr. Pate thought he did.

3 Q. And how did you learn that Mr. Datta,

4 as you put it, thought he had arrived at a

5 telecommuting arrangement?

6 A. He casually mentioned it to me at a

7 staff meeting when he was in White Plains.

8 Q. And do you recall when he casually

9 stated this information with you?

10 A. When Mr. Pate became the CEO, he spent

11 the first couple of months traveling around to meet

12 a lot of employees; so, he wasn't in the office

13 for during the February/March time frame. So, I

14 don't feel all the exact date; but likely, in the

15 March/April time frame.

16 Q. So, to the best of your knowledge, the

17 first time Mr. Datta shared with you what he

18 understood to be the terms of a telecommuting

19 arrangement, was sometime in the March/April time

20 frame; is that right?

21 A. You know, Mr. Datta had, once he became

22 CEO -- IBO, rather -- said that that was something

23 he was going to work on. I gave him some time to

24 work on it, given his other travel priorities.

25 I don't recall exactly, you know, the chronology of

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2 all this, but it wasn't something I was asking about
3 every day.

4 Q. But to the extent you remember the
5 conversation, I think you said it was sometime in
6 the March/April time frame - you're talking about words;
7 correct?

8 A. Hard to recall.

9 Q. That's your best recollection; is that
10 correct?

11 A. It's hard to recall.

12 Q. You're not sure if it was March or
13 April; is that correct?

14 A. That's correct.

15 Q. It might've been at some later time?

16 A. It might've been.

17 Q. Now, you mentioned Mr. Batta traveled;
18 correct?

19 A. Correct.

20 Q. And he traveled, I gather from your
21 response, to some degree after his appointment as
22 chief operations officer; correct?

23 A. Correct.

24 Q. And where would he travel to?

25 A. Various customer locations -- customer

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William LaPerch

2 to travel to one degree or another; is that correct?

3 A. Yes.

4 Q. And do you know how often he traveled
5 in the months following his appointment as chief
6 operations officer?

7 A. I don't understand the question.

8 Q. Do you know how many weeks or months
9 he traveled following his appointment as chief
10 operations officer?

11 A. He traveled frequently. I don't know
12 which days he traveled and which days he didn't, but
13 he traveled frequently.

14 Q. And were these travel arrangements
15 something that were done well in advance, or
16 sometimes on short notice?

17 A. There was planning involved, yes.

18 Q. And did he share with you his travel
19 schedule?

20 A. It was available on Outlook, which is
21 the -- you know, the Microsoft system that we all
22 have access to, to look on people's calendars. So,
23 if I had a tremendous interest in where he was any
24 particular day, I could look on Outlook.

25 Q. And did you ever look at Outlook?

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2 and employee locations in the AboveNet footprint.

3 Q. And that would be throughout the
4 United States?

5 A. Throughout the United States. Over in
6 London, as well.

7 Q. Would it be fair to say he traveled
8 extensively?

9 MR. PEIKES: Objection to the form.
10 What time period?

11 MR. WEINSTEIN: After he was employed
12 as chief operations officer.

13 THE WITNESS: For the period --

14 MR. PEIKES: Objection to the form.

15 THE WITNESS: I'm sorry.

16 MR. PEIKES: Go ahead, you can answer.

17 A. For the period right after his
18 appointment as COO, he did have an extensive travel
19 schedule to get out and introduce himself in his
20 new role to the rest of the company.

21 Q. And did there ever come a point in time
22 after his appointment, where he ceased traveling
23 altogether?

24 A. No.

25 Q. So, would it be fair to say he continued

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2 A. Occasionally.

3 Q. And could you tell me, based on your
4 review of Outlook, how frequently Mr. Batta was
5 absent from the office for the months following his
6 appointment as chief operating officer?

7 A. For the months following his appointment
8 of chief operating officer, he was absent very
9 frequently in the immediate 60-day time frame
10 following his appointment as COO.

11 Q. So, he would've been, based on your
12 testimony, absent from the office far more than
13 present in White Plains; is that correct?

14 MR. PEIKES: Objection to form.

15 A. He would've been traveling on business
16 far more than he'd be in White Plains.

17 Q. That's my question. So, the answer to
18 that is, yes?

19 A. Yes, he would be traveling on business.
20 He wouldn't be absent; he'd be traveling on business.

21 Q. No, I didn't mean to say that he wasn't
22 working. My question really was whether he was
23 physically in White Plains.

24 A. Well, if by "absent," you mean I didn't
25 know where he was, that wasn't the case. I did know

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2 where he was. Absent, to me, is, I can't find
 3 someone.
 4 Q. Okay. So, my question to you wasn't
 5 whether you know where he was; quite the opposite.
 6 My question was whether you were aware that he was
 7 at locations other than the White Plains office,
 8 following his appointment as chief operations
 9 officer.

MR. PEIKES: objection to the form.

A. Yes, I was.

12 Q. And if I understood your testimony
 13 correctly, since he was traveling frequently, he
 14 was often not at the White Plains office in the
 15 months following his appointment as chief operations
 16 officer; is that correct?

MR. PEIKES: Objection to the form.

A. Yes.

19 Q. I'm going to show you a document that
 20 was marked at a prior deposition as Plaintiff's
 21 Exhibit 26. (Handing) This was a document produced
 22 by your lawyers. It contains a Bates stamp of 0198.
 23 And I want to direct your attention to an email at
 24 the bottom of the page from Rajiv Datta, sent
 25 Wednesday, February 2nd, 2011, at 5:08 a.m. to you.

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2 schedule with him and that he would work from Wd on
 3 any day that I was there, but would work from home
 4 on other days, assuming there was no other reason
 5 for him to be in Wd. I think this is okay."

6 You don't remember getting this
 7 email; is that correct?

A. I don't remember, no.

9 Q. Do you know if Mr. Datta shared his
 10 travel schedule with Mr. Tendras, as indicated in
 11 this email?

A. I don't know.

13 Q. The next Garaglaach says, "In terms of
 14 finding him a reasonable home in Wd, any chance we
 15 can move Sanjay out of that office, or will I have
 16 to make Mehdi dad give up his office?"

17 Do you know who he's referring to as
 18 "Sanjay"?

A. I do.

Q. Who is Sanjay?

21 A. Sanjay is the vice president of
 22 Internal audit.

23 Q. And did he have an office in
 24 White Plains?

A. He did.

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2 Do you recall receiving this email?
 3 (Witness peruses exhibit)
 4 A. I don't recall receiving this email;
 5 but obviously, I did.

6 Q. I'm going to direct your attention to
 7 the last part of this email. Well, no. Let me do
 8 this: The first part of this email reads -- the
 9 subject is "Office Updates." It says, "The plan
 10 is for me to move into Doug's office in Wd." I'm
 11 assuming that's a reference to White Plains.

12 That would, apparently, be a reference
 13 to Mr. Tendras; correct?

A. Yes.

15 Q. It goes on to say, "I made it clear
 16 that I am fine with taking some other space -
 17 potentially, the HR Conference room - and don't want
 18 to make a move, but Doug felt it was only appropriate
 19 for me to have that office and that he never wanted
 20 to be in that area in any case. He would rather
 21 work from home, since he doesn't have any significant
 22 people in White Plains."

23 I want to direct your attention to the
 24 last two sentences of that paragraph: "What we
 25 agreed to in the end is that I would share my travel

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2 Q. And he had an office in White Plains on
 3 February 2nd, 2011?

A. Yes.

5 Q. And did you ever respond to the
 6 question laid out in this email from Mr. Datta to
 7 you, where he says, "Any chance we can move Sanjay
 8 out of that office?" Did you ever respond to that?

A. I don't recall.

10 Q. Was Mr. Sanjay moved out of his office
 11 in White Plains?

A. No.

13 Q. There's also a reference here to
 14 Mehdi dad. Do you know who that is?

A. I do.

Q. Who is Mehdi dad?

A. He is our director of IT.

Q. And where was his office located?

19 A. His office was -- main office was over
 20 in Mahwah, but he spent a considerable amount of
 21 time in White Plains.

22 Q. Did he have an office in White Plains,
 23 as well?

24 A. He used a spare office on the -- in one
 25 of the corners.

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02:56:12 2 Q. Did you ever respond to this inquiry by
01:09:13 3 Mr. Gatta, where he -- the part of the sentence
02:00:05 4 says, "Will I have to make Mehdad give up his
02:00:05 5 office?"
03:00:27 6 A. I don't recall.
04:00:27 7 Q. Did Mr. Mehdad give up his office in
02:00:30 8 White Plains?
03:00:55 8 A. No.
03:00:57 10 Q. Does he still have an office in
02:00:11 11 White Plains as of today?
03:04:50 12 A. Uh, yes.
01:09:13 13 Q. Does Mr. Sanjay still have an office
03:00:14 14 in White Plains?
03:00:39 15 A. Yes.
01:09:39 16 Q. And then at the end it says here,
02:00:42 17 "I don't expect to move until the week I am back
02:00:44 18 from India."
02:00:46 19 Do you remember when Mr. Gatta
01:09:49 20 returned from India?
03:00:56 21 A. I don't remember the date, no.
03:10:04 22 MR. WEINSTEIN: We could take a lunch
01:10:05 23 break, since it's now after 1 o'clock, and
03:10:11 24 reconvene.
04:10:11 25 MR. PEIKES: Okay.

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03:10:15 2 (I've been recess held from 2:42 to 1:56 p.m.)
02:56:13 3 COMINUED EXAMINATION BY MR. WEINSTEIN:
02:59:39 4 Q. Mr. LaPerch, I'm going to show you
03:59:58 5 what was marked at a prior deposition at Plaintiff's
04:00:02 6 Exhibit 21. (Handing) It's indicated here that
04:00:11 7 it's a document generated by Teridian Self-Serve.
04:00:18 8 I want to ask you if you're familiar
04:00:19 9 with the Teridian Self-Serve.
04:00:22 10 A. I am.
04:00:23 11 Q. And what is that service?
04:00:24 12 A. It's a service that takes and sends
04:00:28 13 along documents for various related functions inside
04:00:34 14 the company.
04:00:35 15 Q. And this particular document reflects
04:00:36 16 there had been a request made for telecommuting by
04:00:41 17 Mr. Jendras on February 21st, 2011; correct?
04:00:44 18 A. Correct.
04:00:45 19 Q. And it indicates, "Status: Document
04:00:49 20 has been rejected." Do you see that there?
04:00:50 21 A. I do.
04:00:52 22 Q. Had the document, whatever it was
04:00:53 23 the request for telecommuting, been forwarded to
04:00:54 24 you?
04:00:55 25 A. Yes.

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04:02:58 2 Q. And was it you that rejected it?
04:01:01 3 A. Yes.
04:01:04 4 Q. And what was the reason you rejected
04:01:04 5 it?
04:01:04 6 A. Doug no longer worked for me.
04:01:06 7 Q. No longer worked for you, meaning you
04:01:08 8 were no longer his supervisor; is that correct?
04:01:12 9 A. Right, yes.
04:01:13 10 Q. And at what point in your view was he
04:01:16 11 no longer a direct report to you?
04:01:19 12 A. When I made Rajiv the COO.
04:01:23 13 Q. And before Mr. Gatta was made the COO,
04:01:26 14 there was no COO; is that correct?
04:01:27 15 A. Yes.
04:01:27 16 Q. So, a number of people, who had been
04:01:29 17 your direct reports, were now reporting to Mr. Gatta
04:01:31 18 once he was the COO; is that correct?
04:01:35 19 A. Correct.
04:01:38 20 Q. Did you have any direct reports at that
04:01:39 21 point once Mr. Gatta became the COO?
04:01:42 22 A. Yes.
04:01:42 23 Q. Was it less than the number of direct
04:01:44 24 reports you had previously?
04:01:46 25 A. Yes.

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William LaPerch

04:01:46 2 Q. What were the number of direct reports
04:01:49 3 you had after Mr. Gatta became the COO?
04:01:54 4 A. I had Mr. Gatta reporting to me. I had
04:01:57 5 Mr. Ciavarella, who is our CFO. I had Mr. Sokola,
04:02:00 6 general counsel. And I had Mr. Alba, who ran a
04:02:03 7 small unit for us down in Virginia.
04:02:11 8 Q. And that was it?
04:02:12 9 A. And I also had my assistant, Gina.
04:02:15 10 Q. So, in addition to Mr. Jendras, I
04:02:19 11 gather, then, Mr. Laquay was no longer reporting
04:02:24 12 directly to you; is that correct?
04:02:28 13 A. I'm sorry; Mr. Laquay, as well.
04:02:30 14 Q. He was reporting to you?
04:02:30 15 A. He was reporting to Rajiv, yes.
04:02:33 16 Q. So, Mr. Jendras and Mr. Laquay were
04:02:36 17 no longer your direct reports; correct?
04:02:40 18 A. Correct.
04:02:41 19 Q. And other than Mr. Jendras and
04:02:51 20 Mr. Laquay, were there any other individuals, who
04:02:54 21 had previously been direct reports to you, who were
04:02:57 22 now reporting to Mr. Gatta once he became the COO?
04:03:00 23 A. Yes.
04:03:01 24 Q. Who would that have been?
04:03:02 25 A. Mr. Donaldson.

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William LaPerch

Q. And what was Mr. Donaldson's function?

A. He was the managing director in the

U.K.

Q. Anybody else?

A. No.

Q. So, the reason you rejected

Mr. Iendras' request for approval of telecommuting was, as of February 6th, 2011, it was your view that he should take it up with Mr. Oatta; is that correct?

A. That's correct.

Q. And it was not, then, based on any point of view you had; it was solely a decision you felt you no longer were to make since you were no longer his supervisor; is that correct?

A. That's correct.

Q. And do you know if Mr. Oatta was then asked to approve or disapprove telecommuting proposed by Mr. Iendras?

A. I don't know.

Q. You never found out?

A. Well, if by "telecommuting," you mean the form in Ceridian, I don't know.

Q. Okay. Now, let me show you a document

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you?

A. Yes.

Q. And what, if anything, did you say to Mr. Oatta when he inquired with you regarding the rejection of the telecommuting request?

A. I told him that this was something that had to be worked out between Mr. Oatta and Mr. Iendras.

Q. And that's the extent of what you said to him?

A. Yes, that's what I recall.

Q. And where did this conversation take place?

A. Don't remember.

Q. Was it an in-person conversation or telephone conversation?

A. Don't remember.

Q. Did it take place, to the best of your knowledge, shortly after the date of this email - Sunday, February 6th?

A. Don't remember.

Q. Okay. There is a further reference that same day, in response, from Mr. Iendras to Mr. Oatta: "Okay. Let me know if I have to

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William LaPerch

that had previously been marked as Plaintiff's Exhibit 28 at a prior deposition. This is an email chain that was produced by your attorneys. It's a two-page document. And it's a chain of emails between Mr. Oatta and Mr. Iendras. And there is on the second page, an email that appears to be generated by the Ceridian Self-Serve workflow, noting the rejection of Document 247033.

Do you see that there?

A. I do.

Q. Is that how Ceridian Self-Serve worked? They would automatically generate an email if a document was rejected?

A. Yes.

Q. And then, there's an email that follows from Mr. Iendras to Mr. Oatta, dated Saturday, February 5th, 2011, saying, "My telecommuting request was rejected. Should I assume this was in error?" And the response, the following day, Sunday, was, "Not by me. I didn't get the request. Let me check with Bill."

Did Mr. Oatta check with you after he wrote this email indicating he would check with Bill, which appears to be a reference to

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resubmit once the hierarchy is changed." And Mr. Oatta responds that same day in an email dated Sunday, February 6th, 11:03: "Yeah, I will have to check with Gina on whether the Ceridian flow has been changed yet. Bill did reject because this is not 'his decision.'"

That appears to be a reference to a conversation Mr. Oatta had with you; correct?

A. Appears to be, yes.

Q. And it would appear, then, that your conversation with Mr. Oatta would've taken place on Sunday, February 6th; correct?

A. I don't know.

Q. The quote, "his decision," does that appear to you to be an accurate statement of what you had communicated to Mr. Oatta?

A. Yes.

Q. Let me show you a document that was marked at a prior deposition as Plaintiff's 33. This is a document that was also produced by your attorneys, and it's a two-page document, and it also seems to be generated by Ceridian Self-Serve. (Handing)

Do you recognize this document?

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William LaPerch

(Witness exercises exhibit)

A. Yes.**Q. Can you identify it, please.****A. It's the Request for Telecommuting Agreement from Doug Jendras, to me.****Q. So, let me just ask you there: You say it's the request to you.****What's the basis for your conclusion that it's directed to you?****A. Looking at the approval authority on the second page.****Q. And that is --****A. Under where it says, "Status requires action," it requires action by me.****Q. And that reflection under the column "Status," is that something that is generated based on who the request is forwarded to? Is that the --****A. It's based on the HR input of the organizational, or org. chart.****Q. So, what I'm trying to understand is the sequence of events. If I understand you correctly, this is what was actually sent to you before you rejected it?****A. This was sent to me. Ceridian sent COMPU-TRAN SHORTHAND REPORTING**

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William LaPerch**submitted on one earlier occasion, or is that just confirming when this document was submitted?****A. I don't know.****Q. So, this is not a case where you can tell, looking at this, whether this was a second submission of this document?****A. I cannot tell.****Q. Now, if there had been an approval by you or anybody else, would that have been reflected in the document history reflected on the second page of this document?****A. The Ceridian would then generate a Request for Change of Status.****Q. And the Request for Change of Status would be sent to, who? The supervisor in charge of it?****A. Yes.****Q. And if the supervisor said, yes, what would happen next, if you know?****A. Said yes to what?****Q. The Request for Change of Status.****A. If the request was made to change status and it was approved by the supervisor, where it says, "Required Action," then the system would so COMPU-TRAN SHORTHAND REPORTING**

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William LaPerch**this to me when this request was generated, yes.****Q. And that did not come directly from Mr. Jendras; it came from Ceridian. Is that correct?****A. Ceridian is the system that generates this request.****Q. Right, okay. Now, it notes "Effective date: 2/14/2011," on the first page.****Do you see that there?****A. Okay.****Q. Did you have an understanding at all as to what that date signified? Was that the date that it was intended to be the beginning of telecommuting, or was that the date that it was, in fact, deemed to be the effective date of the agreement?****A. I'm not 100 percent sure, but I think Ceridian generates dates based on payroll dates and 2/14 is the next payroll date after 2/1.****Q. Now, up on top, there's a statement, "Document Number 247433. Originally submitted by Douglas Jendras on 2/4/2011, 12:19:25 a.m."****Do you see that there?****A. I do.****Q. Does that mean that this had been****COMPU-TRAN SHORTHAND REPORTING**

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William LaPerch**reflect.****Q. And do you know, as you're sitting here today, whether, at any point in time subsequent to your rejection of the request because you were not, in your view, the supervisor for Mr. Jendras, whether Mr. Datta made any kind of direction relating to Mr. Jendras' status as a telecommuter?****MR. PERKES: Objection to the form.****A. I know that Mr. Datta had discussions with Mr. Jendras on how that would work, yes.****Q. And what I'm asking you is whether there was anything that came to you through the Ceridian workflow after this rejection by you, that would confirm that status?****A. Not through Ceridian workflow.****Q. How did it come to pass?****A. I'm no longer -- when the changes were made in the organization, Ceridian would have -- would not be programmed to do so.****Q. So, when, if at all, were you informed that Mr. Datta had arrived at an agreement with Mr. Jendras relating to telecommuting?****A. Don't recall the date exactly.****Sometime, you know -- sometime, obviously, after****COMPU-TRAN SHORTHAND REPORTING**

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William LaPerch

04-13-08 2 Mr. Datta became the 1ptd and after I rejected this,
 04-13-08 3 but I can't -- I don't know the exact date.
 04-13-08 4 Q. Do you remember the month?
 04-13-14 5 A. Not specifically, no.
 04-13-14 6 Q. Was it after -- you said it was after
 04-13-17 7 the rejection; so, do you know whether it was in the
 04-13-18 8 same month or a following month?
 04-13-18 9 A. I don't, no.
 04-13-22 10 Q. And how was it that Mr. Datta shared
 04-13-24 11 this information with you?
 04-13-25 12 A. Verbally.
 04-13-28 13 Q. And was anyone else present when he
 04-13-28 14 shared this with you?
 04-13-30 15 A. I don't remember.
 04-13-31 16 Q. You don't know whether it was a
 04-13-32 17 late-to-late meeting or a telephonic discussion?
 04-13-35 18 A. I don't.
 04-13-36 19 Q. To the extent that you had a
 04-13-39 20 conversation with him on the subject, do you
 04-13-40 21 remember how long the conversation lasted?
 04-13-41 22 A. No.
 04-13-44 23 Q. And did Mr. Datta indicate in this
 04-13-47 24 conversation that he, in fact, had agreed to a
 04-13-51 25 telecommuting arrangement with Mr. Jendras?

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William LaPerch

04-13-52 2 A. Yes.
 04-13-54 3 Q. And did he share with you his
 04-13-57 4 understanding of what the terms of that agreement
 04-13-58 5 were?
 04-14-00 6 A. Yes.
 04-14-00 7 Q. And what did he tell you the terms
 04-14-02 8 were?
 04-14-02 9 A. In very general terms, if Rajiv was
 04-14-07 10 going to be in the office, then Doug, if he wasn't
 04-14-08 11 traveling on business somewhere else, would be
 04-14-10 12 there, as well.
 04-14-12 13 Q. And did he say anything else?
 04-14-14 14 A. Not that I recall.
 04-14-16 15 Q. So, what Mr. Datta told you was, if
 04-14-22 16 Mr. Jendras wasn't traveling somewhere else and
 04-14-25 17 Mr. Datta was in the office, the understanding is
 04-14-26 18 that Mr. Jendras would be in White Plains, as well;
 04-14-32 19 is that correct?
 04-14-32 20 A. Yes.
 04-14-34 21 Q. And other than this verbal conversation
 04-14-34 22 you had, was there ever anything out in writing
 04-14-37 23 relating to that understanding?
 04-14-42 24 A. I don't know.
 04-14-42 25 Q. And when you say "I don't know," does

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William LaPerch

04-14-46 2 that mean you never saw anything?
 04-14-47 3 A. I don't -- I don't remember. I don't
 04-14-51 4 remember if I saw -- I may have; I don't remember.
 04-14-55 5 I just don't remember.
 04-14-55 6 Q. So, you don't know if you did or you
 04-14-57 7 did not; is that correct?
 04-14-58 8 A. I don't know if Rajiv ever put in
 04-15-02 9 writing to me, in an email or -- in an email that,
 04-15-07 10 you know, outlined the general terms, what we just
 04-15-10 11 discussed.
 04-15-10 12 Q. But you do remember a conversation,
 04-15-12 13 which he indicated that he had approved telecommuting
 04-15-14 14 by Mr. Jendras, and the general outline of that
 04-15-15 15 understanding; is that correct?
 04-15-18 16 A. He said he approved an arrangement
 04-15-21 17 where Doug was going to be in the office when he was
 04-15-24 18 in the office unless Doug was traveling, yes.
 04-15-25 19 Q. And did he indicate to you that he
 04-15-27 20 would share his travel schedule with Mr. Jendras?
 04-15-31 21 A. What do you mean "share"? I don't...
 04-15-31 22 Q. That he would provide Mr. Jendras with
 04-15-34 23 his travel schedule.
 04-15-34 24 A. That was not discussed.
 04-15-37 25 Q. And you don't recall whether he told

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William LaPerch

04-15-39 1 you one way or the other; is that correct?
 04-15-40 2 A. I don't recall whether he did. No,
 04-15-42 3 I don't.
 04-15-44 4 Q. Let me go back to something that I
 04-15-46 5 might've shown you earlier this morning that is
 04-15-48 6 probably back in the file. I'm just looking for my
 04-15-50 7 copy. Give me a second, please.
 04-15-52 8 I'm showing you what had been
 04-15-54 9 previously marked as Plaintiff's Exhibit 26.
 04-15-56 10 This is an email from Mr. Datta, to you, dated
 04-15-58 11 February 2nd. And I want to direct your
 04-16-00 12 attention to the second-to-last line of that
 04-16-02 13 first full paragraph.
 04-16-04 14 (Witness pauses exhibit)
 04-16-06 15 A. Mm-hmm.
 04-16-08 16 Q. "What we agreed to in the end is that
 04-16-10 17 I would share my travel schedule with him and that
 04-16-12 18 he would work from WP on any day that I was there
 04-16-14 19 but would work from home on other days, assuming
 04-16-16 20 there was no other reason for him to be in WP."
 04-16-18 21 Now, do you know whether, in fact,
 04-16-20 22 Mr. Datta has indicated in this email to you, he
 04-16-22 23 stated his travel schedule with Mr. Jendras?
 04-16-24 24 MR. PEIKES: Objection to the form.
 04-16-24 25

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William LaPerch

A. I will read what you just read to me:

"What we agreed to in the end is that I would share my travel schedule with him."

Q. Yes. And I'm asking, do you know if Mr. Batta shared his travel schedule with Mr. Tendras?

A. I do not know, no.

Q. Did he ever indicate to you, at any time subsequent to advising you of the terms of his agreement with Mr. Tendras, of the manner in which he would be sharing his travel schedule with Mr. Tendras?

A. No.

Q. Okay. Thank you.

Now, before Mr. Tendras forwarded, by Cellidian workflow, his request to you for telecommuting, did you have a conversation with him at any time in which you asked him whether he wished to quit AboveNet?

A. I did.

Q. Do you recall when you had that conversation with him?

A. After I appointed Mr. Batta as I.O.

Q. And was that the first time you had that conversation with him?

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William LaPerch

A. Of 2011.

Q. And was it after you learned of that, that you approached Mr. Tendras and asked him whether he wished to voluntarily leave the company?

A. I don't remember whether it was before or after.

Q. But you do remember a conversation, where you made an inquiry whether Mr. Tendras intended to quit; is that correct?

A. The context of the conversation I remember is that I knew he would be disappointed when he was not given the I.O. role and wanted to make sure -- wanted to get an idea of what his thinking was, working for Rajiv.

Q. And your recollection is you had this conversation with him a short time after Mr. Batta was appointed I.O.?

A. It may have been before; I'm not sure. You know, I made my decision towards the end of the year. And we had to get it, you know, approved by the board and everything like that. So, I'm not sure whether it was before or after. But once my decision was made, I had a conversation with Doug.

Q. And your best recollection, it was

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William LaPerch

A. Um, no. I had it many years previous.

Doug was frustrated during the time he was reporting in to finance and was thinking about leaving, and we talked about it. I don't remember the specifics. But that was the other time that he was not happy with -- with the company.

Q. Do you remember the year that conversation --

A. No.

Q. -- look date?

A. I don't.

Q. Did you ever make inquiry with him at a time when you learned that he had made an investment in his brother-in-law's hamburger franchise?

A. I'm sorry; what's the question again?

Q. Did you become aware at any point in time that Mr. Tendras invested in his brother-in-law's hamburger franchise?

A. Yes.

Q. When did you learn that?

A. I don't recall. December of January/February, sometime around that time frame.

Q. Of what year?

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William LaPerch

either shortly before Mr. Batta was appointed or sometime after Mr. Batta was appointed?

A. Sometime around there, yeah.

Q. And that would've been, to the best of your knowledge, either towards the end of 2010 or the early part of 2011; is that correct?

A. Somewhere around there, yeah.

Q. And where did this conversation take place?

A. Don't remember. My office, probably.

Q. Was there anyone else present when you had this conversation with Mr. Tendras?

A. Not to my recollection.

Q. And the purpose of your having this conversation was to see if Mr. Tendras was willing to stay on after the appointment of Mr. Batta?

A. Yes.

Q. And was it your desire that he stay on at that point?

A. Yes.

Q. And did you express that sentiment to Mr. Tendras?

A. Yes.

Q. And what did Mr. Tendras say in

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ISP

1 William LaPerch
 2 response to your inquiry?
 3 A. He wasn't that responsive. He was --
 4 I think he was a little bit upset about the
 5 appointment. But he said that, you know, okay,
 6 fine. I'll, you know, consider all my options.
 7 Q. Did he ever say to you, "I'm leaving
 8 the company?"
 9 A. He never said, "I'm leaving the
 10 company."
 11 Q. And he did not quit either, did he?
 12 A. He did not. He did not -- well, did
 13 not quit, when?
 14 Q. At any time after this conversation
 15 took place.
 16 A. No.
 17 Q. And subsequent to -- was there any
 18 other conversation you recall having with him after
 19 Mr. datta was appointed, where you raised this
 20 subject again, whether Mr. tendras wished to quit
 21 the company?
 22 MA. PEIKES: objection to the form.
 23 A. Could you repeat the question, please.
 24 MA. WEINSTEIN: Could you read it back,
 25 please.

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1 William LaPerch
 2 (Question read)
 3 A. It -- I became aware that -- you know,
 4 that Doug had a conversation with Raju about
 5 wanting a package to leave the company. And that --
 6 I don't remember if I had a subsequent conversation
 7 or that was part of my original conversation with
 8 him. But between, you know, hearing that, knowing
 9 that he made an outside investment in another
 10 business, and knowing his state of mind for, you
 11 know, not being able to be the COO, you know was --
 12 was, you know, cause for my conversation.
 13 Q. And when did you learn about this
 14 discussion you've identified between Mr. datta and
 15 Mr. tendras regarding a package, as you put it?
 16 A. I don't remember.
 17 Q. You believe it was at or around the
 18 same time you had this conversation relating to
 19 whether he wished to quit?
 20 A. I don't remember.
 21 Q. Now, did you review Mr. tendras'
 22 performance for to 10 as his supervisor?
 23 A. Yes.
 24 Q. And did you prepare a review form, like
 25 the previous years, reflecting your assessment of

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1 William LaPerch
 2 his performance?
 3 A. Yes.
 4 Q. And when, if you recall, did that take
 5 place?
 6 A. I think it -- what usually takes place,
 7 sometime in the late February or early March time
 8 frame.
 9 Q. So, this would have been in February or
 10 March of 1011; is that correct?
 11 A. Yes.
 12 Q. And this would've been, then, after
 13 Mr. datta was named as the chief operating officer;
 14 is that correct?
 15 A. Yes.
 16 Q. And this would have been after, in your
 17 view, Mr. Datta became Mr. Tendras' supervisor;
 18 correct?
 19 A. Correct.
 20 Q. And it would have also been after
 21 Mr. tendras had discussed telecommuting with
 22 Mr. datta; correct?
 23 A. don't know.
 24 Q. You don't know, or you don't remember?
 25 A. I don't know.

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1 William LaPerch
 2 Q. Let me show you a document that was
 3 marked at a prior deposition as Exhibit 19. And let
 4 me direct your attention to the signature page,
 5 which is the last page of this document. (Handing)
 6 (Witness peruses exhibit)
 7 Is that your signature underneath
 8 the designation for "Supervisor/Reviewer"?
 9 A. It is.
 10 Q. And it appears you signed it on
 11 February 7th, correct, of 1011?
 12 A. That's correct.
 13 Q. And that would have been after
 14 Mr. datta shared with you his thoughts on the
 15 proposed telecommuting by Mr. tendras; correct?
 16 A. The date of the email was 2/4/11
 17 Q. Well, rather than my -- if you're
 18 taking my word for it, let's see if we can -- it's
 19 Exhibit -- yes, you have it in front of you.
 20 A. February 2nd, yes.
 21 Q. February 1st.
 22 A. No, not necessarily, because the date
 23 I signed it, isn't necessarily the date I put it
 24 together.
 25 Q. Okay.

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William LaPerch

04:28:02 2 A. In fact it's, more than likely, not.
 04:28:06 3 Q. Still you knew about it, to say the least,
 04:28:07 4 before you signed it, then, based on what you've
 04:28:13 5 just said; is that correct?
 04:28:15 6 A. I don't know that.
 04:28:18 7 Q. Would you have put the wrong date down
 04:28:19 8 as the date you signed it?
 04:28:20 9 A. No, but it could have been being
 04:28:22 10 processed, typed up. You know, it actually takes at
 04:28:24 11 least a week to do that.
 04:28:26 12 Q. I'm not asking when it was prepared;
 04:28:28 13 I'll take your testimony on its word on that.
 04:28:30 14 I'm asking you, simply: At the point
 04:28:32 15 you signed this, regardless of when it was prepared,
 04:28:34 16 you were already aware of the discussion regarding
 04:28:36 17 telecommuting between Mr. Tondras and Mr. Datta;
 04:28:38 18 correct?
 04:28:40 19 A. At the point I signed it, yes.
 04:28:42 20 Q. Now, I want to direct your attention to
 04:28:44 21 page seven of this document.
 04:28:46 22 The last box there on "Supervisor's
 04:28:48 23 Comments" reads, "Doug has the often-difficult
 04:28:50 24 task of communicating with customers when
 04:28:52 25 installs are late or service is a problem. He

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William LaPerch

04:29:04 2 does this very effectively. When asked to do
 04:29:06 3 board-level presentations, Doug also does very
 04:29:08 4 well.
 04:29:10 5 Occasionally, I receive input from
 04:29:12 6 some salespeople that Doug is hard to approach.
 04:29:14 7 While I believe this to be perception versus
 04:29:16 8 reality, it, nevertheless, is something to be
 04:29:18 9 aware of.
 04:29:20 10 Now, you indicate -- these are your
 04:29:22 11 words; correct?
 04:29:24 12 A. Correct.
 04:29:26 13 Q. And you indicate that you had input
 04:29:28 14 from some salespeople relating to this comment that
 04:29:30 15 Doug is hard to approach.
 04:29:32 16 What salespeople were you refers to
 04:29:34 17 there?
 04:29:36 18 A. I was speaking generically. I was
 04:29:38 19 referring to all of the sales leadership.
 04:29:40 20 Q. So, the head of sales was Mr. Jacquay
 04:29:42 21 at that time; correct?
 04:29:44 22 A. He was, yes.
 04:29:46 23 Q. And Mr. Jacquay indicated to you that
 04:29:48 24 Mr. Tondras was hard to approach?
 04:29:50 25 A. Yes.

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04:30:17 2 Q. And when did he indicate that to you?
 04:30:19 3 A. From 2004, through 2010.
 04:30:21 4 Q. And so, was he telling you that on a
 04:30:23 5 regular basis over that period of time?
 04:30:25 6 A. Yes.
 04:30:27 7 Q. And had he told that to you --
 04:30:29 8 withdrawn.
 04:30:31 9 Now, during that same period of time,
 04:30:33 10 had you made a comment like this in any of his
 04:30:35 11 earlier reviews?
 04:30:37 12 A. Not in his reviews.
 04:30:39 13 Q. And to the extent that Mr. Jacquay had
 04:30:41 14 shared this with you over that period of time, had
 04:30:43 15 you shared this observation by Mr. Jacquay with
 04:30:45 16 Mr. Tondras at any time prior to putting it in this
 04:30:47 17 review?
 04:30:49 18 A. I can't recall specifically. I --
 04:30:51 19 Mr. Jacquay is a extremely opinionated individual.
 04:30:53 20 He has opinions about pretty much everybody in the
 04:30:55 21 company, you know? And part of my job was to sift
 04:30:57 22 through those and -- and decide which ones to use
 04:30:59 23 to help people get better and decide which ones to
 04:31:01 24 disregard.
 04:31:03 25 Q. Did Mr. Jacquay share his -- a view

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04:31:06 2 to you during this period of 2004 to 2010 that
 04:31:08 3 Mr. Tondras was not doing his job well?
 04:31:10 4 A. Yes.
 04:31:12 5 Q. And did he express that view
 04:31:14 6 consistently between 2004 and 2010?
 04:31:16 7 A. Yes.
 04:31:18 8 Q. And did you agree with him?
 04:31:20 9 A. No.
 04:31:22 10 Q. And other than Mr. Jacquay, what other
 04:31:24 11 salespeople indicated to you that Mr. Tondras was
 04:31:26 12 hard to approach?
 04:31:28 13 A. Mr. Turtz, Mr. Nanko, Mr. Giannis.
 04:31:30 14 Q. Anybody else?
 04:31:32 15 A. There was only one other. Mr. Nikla
 04:31:34 16 wasn't really that vocal to begin with.
 04:31:36 17 Q. Okay. Now, directing your attention in
 04:31:38 18 this review to the category -- or I should say the
 04:31:40 19 heading, "Performance Competencies." It begins on
 04:31:42 20 page six. Did you mark off these boxes to indicate
 04:31:44 21 for each of these categories whether Mr. Tondras met
 04:31:46 22 or exceeds expectations?
 04:31:48 23 A. I shared this with Doug when I gave it
 04:31:50 24 to him. This was a reflection of the organization,
 04:31:52 25 especially the productivity one.

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02/11/13 12:09:31:06 AM

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Q. So, these were your notations? You marked all these boxes; is that correct?

A. I did, yes.

Q. And it's true, is it not, that with respect to these Performance Competencies, you did not mark any boxes that said "Unacceptable" or "Improvement Needed." You either marked "Meets Expectations" or "Exceeds Expectations," correct?

A. Correct.

Q. Now, subsequent to your completion of this review, did you make a recommendation regarding a merit increase for Mr. Jendras in the year 2011?

A. I don't recall.

Q. You don't recall whether you did or you didn't?

A. Right.

Q. If you did, would you have presented that to the board of directors as you had in prior years?

A. If I did, it would be on the spreadsheet that was sent to the board of directors, yes.

Q. And if it was approved, would it have been reflected in the 10-k that you certified as accurate, as well?

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A. As long as nothing changed between the time it was approved and the time we had to file a 10-K.

Q. Okay. I want to direct your attention to the 10-k that was previously marked, and I'll tell you where I want to direct your attention to. Page 113.

A. Okay.

Q. I want to direct your attention to the second-to-last sentence. It says, "Based on Mr. LaPerch's recommendation, the Compensation Committee approved an increase in base salary for Mr. Jendras from \$190,000 per annum, to \$195,000 per annum, effective March 1, 2011."

That's what's in the 10-k.

A. Mm-hmm.

Q. Does that now refresh your recollection as to whether you recommended a merit increase for Mr. Jendras?

A. I did. I did recommend, in the spreadsheet that I sent the board, a increase from 190 to 295,8.

Q. And the board, apparently, approved it; correct?

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A. That's what it says here, yes.

Q. And you, in fact, certified the accuracy of the reality that you, in fact, had made a recommendation that the Compensation Committee had approved it, and that he did get a base salary increase from 199,000 per annum to 295,800 per annum; correct?

A. Correct.

Q. Now, did you subsequently direct Sheila Chang to withhold this merit increase disclosed in the 10-k?

A. I did.

Q. And when did you do that?

A. I forget.

Q. Was it after the disclosure in the 10-k?

A. I don't remember.

Q. And at the time that you made that direction, had there been any public disclosure to the effect that -- withdrawn.

A. At the time you made that direction, had you met with the board of directors to unwind the merit increase that had been approved to Mr. Jendras?

A. I never did unwind it.

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Q. I'm asking you: Before you made the statement to Ms. Chang to withhold it, had you gone to the board of directors to seek a reversal of the prior approval?

A. I don't recall when I asked Miss Chang; so, I don't -- I don't know the sequence of events there.

Q. Maybe I can help you with that.

A. Yup.

Q. I'm going to show you what was marked at a prior deposition as Plaintiff's Exhibit 31. (Hanging. It's an email chain.

A. Mm-hmm.

Q. And it starts on the second page with Mr. Jendras writing to Ms. Chang on Wednesday, March 16th. And he says, "Sheila, I noticed that I did not receive my merit increase yesterday. Can you let me know if that was an oversight? Thanks, Doug."

Does that refresh your recollection as to when Ms. Chang was directed not to give the prior-approved merit increase to Mr. Jendras?

A. No.

Q. Then, there's an email that follows,

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4:39:23 2 from Ms. Chang to you, dated that same day. She
 4:39:30 3 says to you, "Why does Doug think he got a merit
 4:39:37 4 increase? I will not respond to him until I hear
 4:39:44 5 from you. Thanks."
 4:39:51 6 does that refresh your recollection
 4:39:58 7 as to when you made the direction to Ms. Chang?
 4:40:05 8 A. No.
 4:40:12 9 Q. Then, you respond, on March 17th,
 4:40:19 10 "I did not tell Doug he received a merit increase.
 4:40:26 11 However, I didn't realize it was out in the 10-K;
 4:40:33 12 so, he probably read he received one in the
 4:40:40 13 document. I will speak to Aob on Monday on how to
 4:40:47 14 straighten this out."
 4:40:54 15 At the time you wrote this email,
 4:41:01 16 was this after you had directed Ms. Chang not to
 4:41:08 17 pay the merit increase?
 4:41:15 18 MA. PEIKES: Objection to the form.
 4:41:22 19 A. I said in the email, "I did not tell
 4:41:29 20 Doug he received the merit increase."
 4:41:36 21 I still don't recall when I told
 4:41:43 22 Sheila, I'm not sure, but I think what happened --
 4:41:50 23 there were no other merit increases given. I don't
 4:41:57 24 know why Doug got one, because I usually give
 4:42:04 25 people -- you know, I give it to everyone on the team.

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4:42:04 2 That there was, obviously, some slipup or mistake
 4:42:11 3 between when -- what got to HR and what got in the
 4:42:18 4 10-K.
 4:42:25 5 Q. Now, you had already certified the
 4:42:32 6 accuracy of the 10-K?
 4:42:39 7 A. I did.
 4:42:46 8 Q. And in this email, you're saying to
 4:42:53 9 Ms. Chang that you didn't even realize it was in
 4:43:00 10 the 10-K; correct?
 4:43:07 11 A. On March 17th, I didn't realize it, no.
 4:43:14 12 Q. And that was after you had already
 4:43:21 13 certified --
 4:43:28 14 A. That's right.
 4:43:35 15 Q. -- the accuracy of it; correct?
 4:43:42 16 A. That's right.
 4:43:49 17 Q. And if I were to tell you that
 4:43:56 18 Ms. Chang testified that you had told her to reverse
 4:44:03 19 the approval prior to this email exchange, would you
 4:44:10 20 say she was lying about that?
 4:44:17 21 MA. PEIKES: objection to the form.
 4:44:24 22 A. No.
 4:44:31 23 Q. And why would you give the instruction
 4:44:38 24 to Ms. Chang to reverse something that had been
 4:44:45 25 publicly disclosed and acted upon by the board of

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4:44:52 2 directors?
 4:44:59 3 A. I was looking at equity across all the
 4:45:06 4 senior YPs. I didn't give anyone else a raise that
 4:45:13 5 year. And Doug's performance didn't stand out from
 4:45:20 6 everybody else's, so...
 4:45:27 7 Q. So, you unilaterally give the
 4:45:34 8 instruction to Ms. Chang, because of that point of
 4:45:41 9 view?
 4:45:48 10 A. I did. But once I spoke to Aob, we
 4:45:55 11 straightened it out, and Doug got his raise.
 4:46:02 12 Q. And that's what's reflected in the
 4:46:09 13 balance of this email chain?
 4:46:16 14 A. That's correct.
 4:46:23 15 Q. Mr. Sokota gave an instruction to you
 4:46:30 16 and Ms. Chang: "Put in the increase retroactively
 4:46:37 17 starting March 1 --"
 4:46:44 18 A. That's right.
 4:46:51 19 Q. -- consistent with everyone else."
 4:46:58 20 That would've meant Mr. Jendras did
 4:47:05 21 not receive what had been publicly disclosed as
 4:47:12 22 his merit increase on March 3, itself; correct?
 4:47:19 23 A. Correct.
 4:47:26 24 Q. Now, if Mr. Sokota had not given you
 4:47:33 25 this instruction, would you have gone along with it?

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4:47:36 2 MA. PEIKES: objection to the form.
 4:47:43 3 A. Gone along with what?
 4:47:50 4 Q. The merit increase for Mr. Jendras
 4:47:57 5 disclosed in the 10-K.
 4:48:04 6 A. It's a moot point. You know, I have
 4:48:11 7 a general counsel to ask questions like that.
 4:48:18 8 Q. Did you consult with Mr. Sokota before
 4:48:25 9 you gave the instruction to Ms. Chang to withhold
 4:48:32 10 the increase that was approved for Mr. Jendras?
 4:48:39 11 A. No, not to my recollection.
 4:48:46 12 Q. So, you didn't ask Mr. Sokota until
 4:48:53 13 after you had already made the instruction to
 4:49:00 14 Ms. Chang; correct?
 4:49:07 15 A. I've already indicated, I don't exactly
 4:49:14 16 remember when I gave the instruction to Ms. Chang.
 4:49:21 17 Q. Redirecting your attention to your
 4:49:28 18 review of Mr. Jendras' performance in 2010, did you
 4:49:35 19 meet with Mr. Jendras as part of the review process
 4:49:42 20 to discuss your assessment of his performance in
 4:49:49 21 2010?
 4:49:56 22 A. On March 7th, the day he signed it.
 4:50:03 23 Q. Is that when you believe you met with
 4:50:10 24 him?
 4:50:17 25 A. That's when I believe I met with him.

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2 yes.

3 Q. Okay. And did you express to him, at
4 the time you met with him, that you were not happy
5 with the fact that he was telecommuting at the
6 point?

7 A. I don't recall.

8 Q. You don't recall whether you did or you
9 didn't; is that correct?

10 A. I don't recall whether I did or I
11 didn't.

12 Q. Other than Mr. Jendras' merit increase
13 that was approved by the board of directors and
14 disclosed in the form 10-K, did you seek to reverse
15 any other financial compensation that had been
16 approved for Mr. Jendras?

17 A. I don't recall.

18 Q. You don't recall whether you did or you
19 didn't?

20 A. I don't recall whether I did or I
21 didn't.

22 Q. Well, let me be more specific: Did
23 you have a conversation with Mr. Sokota at any time
24 in 2011, in which you suggested that it would be
25 appropriate to modify the terms of the January 25th,

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2 in the 10-K?

3 A. No, I don't remember.

4 Q. What you do remember is it had some
5 correlation with when you learned about his
6 discussions relating to a voluntary separation from
7 the company; is that correct?

8 A. That's correct.

9 Q. And the conversation with Mr. Sokota
10 related to -- withdrawn.

11 do you know when he first started
12 having conversations relating to involuntary
13 separation?

14 A. In some of his initial conversations
15 with Ajju, when they were discussing Ajju's new
16 role and his new role.

17 Q. And would it be fair to say that took
18 place in or about March of 2011?

19 A. I can't remember. I would think,
20 before that, but I'm not sure.

21 Q. Well, let me see if I can help you.

22 You indicated that you had a conversation with
23 Mr. Jendras relating to his review for 2010 on the
24 same day that he signed it, which was March 7th,
25 2011; correct?

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2 2011, stock award that had previously been approved
3 by the board of directors?

4 A. Yes.

5 Q. When did you have that conversation?

6 A. When I became aware that Doug was
7 looking to leave the company and wanted a package
8 that included all of his stock awards.

9 Q. And can you tell me the month in which
10 this conversation took place?

11 A. No.

12 Q. That conversation took place between
13 you and Mr. Sokota?

14 A. To the best of my recollection, yeah.

15 Q. And where did it take place?

16 A. I don't recall.

17 Q. Do you know if it was an in-person
18 meeting or a telephonic discussion?

19 A. Don't recall.

20 Q. Do you know if anybody else participated
21 in the conversation?

22 A. Don't remember.

23 Q. Do you remember whether it was at or
24 about the same time that you made the direction to
25 Ms. Chang to reverse the merit increase disclosed

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2 A. Right, yes.

3 Q. Had you had a conversation with
4 Mr. Sokota prior to sitting down with Mr. Jendras
5 on March 7, 2011, regarding a change in the terms
6 of the January 15, 2011, Stock Award Agreement?

7 A. I don't recall the timing.

8 Q. Now, in this conversation you had with
9 Mr. Sokota, at the time you were having this
10 conversation, there had already been an award made
11 by the Compensation Committee that was disclosed in
12 the form 10-K; correct?

13 A. I don't know. I can't -- I don't know
14 when the conversation happened. I think the 10-K
15 came out in early March. I don't know if the
16 conversations happened before or after that.

17 Q. Well, to the extent you were having
18 this conversation and it related to a change in
19 terms of a preexisting agreement; correct?

20 A. Yes.

21 Q. And it was an agreement that wouldn't
22 have existed unless there had already been a
23 presentation to the board of directors; correct?

24 A. My definition of agreement is our
25 standard stock agreement. It wasn't a particular

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2 award agreement. It was the way that the company
3 gave out stock and the terms and conditions they
4 gave it out under.

5 Q. And that's what I'm talking about.

6 I'm talking about what you were asked about earlier
7 in this deposition; and more specifically, the
8 January 15, 2011, award.

9 And your testimony, as I recall it, was
10 that you made certain recommendations, including one
11 involving Mr. Iendras; correct?

12 A. Correct.

13 Q. And you then made your presentation to
14 the Compensation Committee; correct?

15 A. Correct.

16 Q. And the Compensation Committee then
17 approved it; correct?

18 A. Correct.

19 Q. And then, the board of directors
20 approved it that same day; correct?

21 A. Correct.

22 Q. And then, the form of agreement that
23 was approved was disclosed in both the form 10-K and
24 the form 8-K; correct?

25 A. Correct.

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2 Q. And you certified in the 10-K that that
3 was, in fact, a true and accurate statement of the
4 terms of the agreement with Mr. Iendras; correct?

5 A. Correct.

6 Q. Now, you've mentioned you had a
7 conversation with Mr. Sokota, in which you discussed
8 with him a change in the terms of the January 15th,
9 2011, Stock Award Agreement; correct?

10 A. Correct.

11 Q. And so, that change wouldn't have been
12 a change unless it was something that was happening
13 after all of these other events had occurred;
14 correct?

15 MA. PEIKES: Objection to the form.

16 A. The change that we were contemplating
17 was directly related to the information that we had,
18 that Mr. Iendras wanted to leave the company and
19 wanted all of his stock to go with him.

20 Q. Aight. And the timing of the
21 discussion took place after there had already been
22 a disclosure in the 10-K and the 8-K; correct?

23 MA. PEIKES: Objection.

24 A. The timing of which disclosure

25 MA. PEIKES: Let me state an objection

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1 William LaPerch

2 as asked and answered. He's already said he
3 didn't know the timing as related to the
4 10-K and 8-K.

5 MA. WEINSTEIN: Well, I think he
6 answered it differently, but that's why I'm
7 entitled to inquire.

8 So, why don't you read back the
9 question, please.

10 (Question read)

11 A. As I said before, I'm not sure of the
12 chronology of all these conversations.

13 Q. Would you have told Mr. Sokota to
14 change the terms of the January 15th, 2011,
15 Stock Award Agreement before it was the subject
16 of a public disclosure?

17 MA. PEIKES: Objection to the form.

18 A. I would've told Mr. Sokota to change
19 the conditions of the stock agreement when --
20 whenever, in my judgment, it would protect the
21 shareholder value of the company.

22 Q. Well, I'm not talking in general terms.
23 I'm talking now about the Stock Award Agreement for
24 Mr. Iendras for January 15th, 2011.

25 My question to you is: This conversation
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2 which you say took place with Mr. Sokota, did it
3 take place before you made your presentation to
4 the board of directors of AboveNet on January 15th,
5 2011?

6 A. I don't know.

7 Q. did it take place after Mr. Iendras had
8 signed the January 25th, 2011, Stock Award Agreement?

9 A. I don't know.

10 Q. did it take place after both Mr. Iendras
11 and Mr. Sokota had signed the January 25, 2011,
12 Stock Award Agreement?

13 A. No; it took place before that.

14 Q. And do you know what it was that you
15 actually presented to the board of directors on
16 January 15th, 2011, as the basis for the proposed
17 Stock Award Agreement to Mr. Iendras?

18 A. Can you expand on that question? I
19 don't understand it.

20 Q. Sure. I'm going to redirect your
21 attention to the specific document. (Reading)
22 For the record, it's Exhibit 13. You'll note
23 that that's a document produced by your attorneys,
24 and it reflects a signature on the signature
25 page of both Mr. Iendras and Mr. Sokota; correct?

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(Witness peruses exhibit)

A. Correct.

Q. And it reflects a date underneath

Mr. Sokota's signature of March 4th, 1011; correct?

A. Correct.

Q. And it indicates in this form of

agreement that according to Paragraph 4d, which

I had asked you about earlier, that if there was a

termination of the participant's continuous service

by the company without cause, or by the employee

for good reason, any unvested stock unit shall

immediately vest.

Do you see that there?

A. I do.

Q. And you've previously indicated that

this form of agreement, which was signed by Mr. Sokota

on behalf of the company re: Mr. Jendras, was, in

fact, the form of agreement that was disclosed in

the 8-K and incorporated by reference in the 19-K,

that you had certified as accurate; correct?

A. Yes.

Q. And you've indicated you had a

conversation with Mr. Sokota, in which you directed

him to alter the terms of the January 25th, 1011,

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Stock Award Agreement; correct?

MA. PEIKES: Objection to the form.

A. We had a conversation -- I had a

conversation with my general counsel, and we decided

to change the terms of the existing stock agreement,

as it hadn't been delivered to Mr. Jendras at that

point.

Q. So, if I understand your testimony

correctly, this conversation with Mr. Sokota

occurred sometime after Mr. Sokota had signed it,

but before it was delivered to Mr. Jendras; is that

correct?

A. I don't recall the timing of all of this. I see what date Mr. Sokota signed it, but I don't recall the date that we had the conversation.

Q. The discussion took place, though,

after the award had already been made to Mr. Jendras

and approved by the board of directors; correct?

MA. PEIKES: Objection to the form.

A. I don't recall the time.

Q. You believe that this conversation

with Mr. Sokota might've taken place before

January 25th, 2011?

A. I don't know.

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Q. Assume for the sake of this question

that the conversation took place before January 15th,

1011. Does that mean you ultimately concluded that

the terms of the award were properly the subject of

what's set forth and memorialized in Plaintiff's

Exhibit 23, and which, in fact, you presented to the

board of directors?

A. Could you repeat the question.

MA. WEINSTEIN: Could you read it back, please.

(Question read)

MA. PEIKES: Just note my objection to the form of the question.

If you understand it, you can answer it.

A. I don't understand it.

Q. So, you don't remember exactly when

you had this conversation with Mr. Sokota regarding

a change in the terms of the January 25th, 2007,

Stock Award Agreement; is that correct?

A. The only -- the only thing I remember

on this conversation was it was after we became

aware that Mr. Jendras no longer wanted to work for

the company and wanted a package to leave.

Q. And with regard to your awareness of

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that discussion, did you also have an awareness of

Mr. Jendras' point of view regarding his entitlement

to the stock units that were the subject of the

January 15th, 1011, award?

A. I did.

Q. And so, would it be fair to say if

Mr. Jendras was talking about it, he was already

aware and had been made aware of the January 15th,

1011, award; is that correct, sir?

A. No.

Q. Well, how would he be able to talk

about it if he didn't know about it?

A. The context in which I answered your

previous question was that Mr. Jendras' ask was for

all of his stock, vested and unvested, going out.

That was the context I answered in. I wasn't

referring to a specific -- a specific award. I

was referring to, if he had left at the time he was

indicating, that he wanted all of his future stock,

even though he wasn't here.

Q. There was no discussion that you were

aware of between Mr. Jendras and others at the

company regarding his desire that he be given the

benefits of the January 25th award?

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A. What do you mean by "benefit"?

Q. That he'd receive accelerated vesting

of that stock based on a voluntary separation from the company?

A. It was my understanding that his request was to receive accelerated vesting of all of his stock.

Q. And would that have included the restricted stock units identified in the January 15th, 2011, award?

A. Yes.

Q. And then, subsequent to your learning about this position taken by Mr. Tendras, you had a discussion with Mr. Sokota regarding a change in the terms of that award agreement; correct?

A. Yes.

Q. And that change involved a change in the terms that provided for accelerated vesting if Mr. Tendras was terminated without cause; correct?

A. The change was initiated to seek -- to ensure that in order to collect that stock, the employee had -- Doug had to be around.

Q. Well, let me ask it this way: Would the changes have eliminated the language that is set

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Compensation Committee.

A. The Compensation Committee.

I did not have a conversation at that point in time with the Compensation Committee. I was acting under -- under the terms that -- the terms provided that said, between the time that the award is awarded and when the contracts are executed and the employee is notified, if anything changes, the senior executives in the company should do what's right.

Q. You didn't make a presentation to the Compensation Committee, then; is that correct?

A. What do you mean by "then"? When is "then"?

Q. At the time you were speaking to Mr. Sokota and giving this instruction to him, had you, prior to that, gone to the Compensation Committee?

A. No.

Q. Had you gone to the board of directors and asked their approval for a change in the terms of Mr. Tendras' January 75, 2011, Stock Award Agreement?

A. No.

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found in Exhibit 13, which is before you; more specifically, Paragraph 4?

A. I'm not a lawyer; I'm not qualified to answer that.

Q. Well, to the extent that you had the conversation with Mr. Sokota, what is it that you recall telling him?

A. I recall telling him that we're not in a position to accelerate the vesting of somebody that's not going to be around to earn the stock.

Q. And did you have an expectation, when you said this to Mr. Sokota that he would, in fact, change the terms of the January 15th, 2011, Stock Award Agreement?

A. Yes.

Q. And at the time that you had this conversation with Mr. Sokota, had you made a presentation to the Compensation Committee in which you presented this point of view in a proposal to modify the terms of the January 15th, 2011, stock award?

A. Did I have a conversation with the board about this decision?

Q. Yes. No; actually, I said, the

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Q. Had you sought to modify the terms at the disclosure that was made in either the 10-K or the 8-K regarding the terms of Mr. Tendras' Stock Award Agreement?

A. I was -- the intent was to do that. I don't recall what the timing had to be in order to get all that stuff done, but there was no intent to hide our intentions from either the -- you know, the public reporting responsibilities that we had, or the communication with the board of directors. We were merely acting under the terms of the agreement, which said that once this has been approved, we should take the necessary steps to make sure that -- make sure that the contracts are executed and that, you know, absent anything extraordinary -- which we viewed this as extraordinary -- we should do that.

Q. Okay. My question to you, sir, is: At any time before you had this conversation with Mr. Sokota and gave the instruction you did, whether or not there had been any disclosure in any of the public filings that you, sir, had made a decision to change the terms previously disclosed, reflecting Mr. Tendras' January 15th, 2011, Stock Award

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2 Agreement?

3 MA. PEIKES: Objection to the form.

4 You could answer if you could

5 follow the question

6 A. Prior to -- prior to speaking to

7 Mr. Sokota, I did not confer with the board of

8 directors or the Compensation Committee.

9 Q. My question -- I already asked that

10 question.

11 My question was: Was there ever any

12 public filing made, which set forth different terms

13 than those that had previously been disclosed, for

14 Mr. Tendras' January 15th, 2011, Stock Award

15 Agreement?

16 A. Prior to my conversation -- I mean,

17 before my conversation with Mr. Sokota?

18 Q. Aight.

19 A. No.

20 Q. Was there ever any disclosure

21 subsequent to your conversation with Mr. Sokota,

22 that the terms of Mr. Tendras' January 15th, 2011,

23 Stock Award Agreement had changed?

24 A. Yes.

25 Q. Where was that disclosure?

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2 Q. And that carries with it certain

3 responsibilities; doesn't it, sir?

4 A. It does.

5 Q. And if you don't make that disclosure,

6 you're violating the applicable securities law's;

7 aren't you, sir?

8 MA. PEIKES: objection. It calls for

9 a legal conclusion.

10 Q. Well, you can answer to the best of

11 your knowledge.

12 A. I don't know.

13 Q. So that if disclosure had not been made

14 of this change that you discussed with Mr. Sokota,

15 that would not have been proper; correct, sir?

16 MA. PEIKES: Objection to the form of

17 the question.

18 A. I don't know.

19 Q. And if there was a change that was not

20 disclosed -- withdrawn.

21 Now, you're saying your understanding

22 is that it did appear in some kind of public

23 filing; correct?

24 A. Did what appear?

25 Q. This change that you discussed with

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2 A. Don't recall. It's, you know, after

3 we had -- after we had told the board and the --

4 the Compensation Committee and the board, Bob was

5 to file the necessary disclosure. I don't recall

6 what date or time it was.

7 Q. So, as you're sitting here today,

8 you're saying that subsequent to this conversation

9 with Mr. Sokota, there was a public filing that

10 indicated that the terms of the Stock Award

11 Agreement for Mr. Tendras, approved by the board

12 of directors on January 15th, 2011, had changed;

13 is that correct?

14 A. That's my understanding, yeah.

15 Q. And what's the basis for that

16 understanding?

17 A. Because that's what you're supposed to

18 do.

19 Q. That's what you're supposed to do, but

20 do you know if that was done here?

21 A. I don't know 100 percent.

22 Q. And why is that what you're supposed to

23 do, sir?

24 A. Because we have -- we have -- because

25 we've changed something we've already disclosed.

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2 Mr. Sokota.

3 A. Well, I mean, it -- I don't know.

4 You know, the questions are getting

5 confusing at this point.

6 The fact is that there may have not

7 been any change to the existing agreement. We may

8 have acted under the -- under the terms of the

9 existing agreement and thought that the filing

10 change was not necessary. I don't recall the

11 specific legal interpretation of all that.

12 Q. After this conversation with

13 Mr. Sokota, did he prepare another form of agreement

14 for the January 15th, 2011, stock award that had

15 been approved on your recommendation by both the

16 Compensation Committee and the board of directors

17 on January 15th?

18 A. Prepare for what?

19 Q. For Mr. Tendras.

20 A. I don't know.

21 Q. I'm going to show you a document marked

22 at a prior deposition as Plaintiff's Exhibit 37.

23 MA. PEIKES: Do you want to take a

24 minute before you go through that?

25 THE WITNESS: Sure.

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MA. PEIKES: Why don't we take a two-minute break.

MR. WEINSTEIN: Okay.

(Access held from 3:04 to 3:13 a.m.)

CONTINUED EXAMINATION BY MR. WEINSTEIN:

Q. I want you to look at a document that was marked at a predeposition as Plaintiff's Exhibit 37. It's a document that was produced by your attorneys in response to a request for production. And it's an email from Bob Sokota, to Gina Grimmer, dated Thursday, March 24th, 2011.

Have you seen this email before today?

(Witness peruses exhibit)

A. No.

Q. I want to direct your attention to the form of Stock Award Agreement that's referenced in this email from Mr. Sokota to Ms. Grimmer.

do you recall seeing this document prepared by Mr. Sokota?

A. No.

Q. In looking at it now, does this reflect the change that you had discussed with Mr. Sokota in Mr. Tendras' January 15th, 2011, stock award?

(Witness peruses exhibit)

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change, there had not been any discussion with the board of directors regarding the change set forth in this different form of agreement for Mr. Tendras; correct?

A. I don't know.

Q. You don't know whether it had or it hadn't?

A. That's right.

Q. do you know whether you had made such a presentation to the board of directors?

A. I don't remember.

Q. do you know whether you had made a presentation to the Compensation Committee setting forth this change in terms, in the form of agreement sent by Mr. Sokota, to Ms. Grimmer, on March 24th?

A. I don't recall.

Q. Now, do you know whether Mr. Sokota, in fact, sent this proposed new form of Stock Award Agreement to Mr. Tendras?

A. Only from reading this email.

Q. Well, the email is not to Mr. Tendras; it's to Ms. Grimmer.

A. Right.

Q. Although it does say, "Gina, see

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A. Yes.

Q. You'll note in Paragraph 6, it no longer has a provision that provides for accelerated vesting if Mr. Tendras was terminated without cause; correct?

A. Correct.

Q. And it would appear, then, that Mr. Sokota prepared this document in or about March 14, 2011; correct?

A. Correct.

Q. And that would've been after Mr. Sokota and Mr. Tendras had signed the January 15th, 2011, award that had been approved by the board of directors; correct?

A. After they signed it; correct.

Q. And it would've been after the board of directors approved it, as well; correct?

A. Correct.

Q. And it would've been after there had been a disclosure of the terms of that award in both the 10-X and the 8-K; correct?

A. Yes.

Q. And at the point in time that Mr. Sokota was sending this Stock Award Agreement via the

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attached revised draft of the agreement for Doug that you can send to him."

Q. do you know whether, in fact, at his direction it was sent to Mr. Tendras after this email was sent to Ms. Grimmer?

A. I don't know that for a fact.

Q. do you know whether Mr. Tendras expressed a point of view as to whether this proposed change in the terms of the January 15th, 2011, Stock Award Agreement was acceptable to him?

A. I, subsequently, heard that it was not acceptable to him.

Q. And were you aware, at the time that Mr. Sokota prepared this change, whether or not Mr. Tendras had been in receipt of the fully executed January 15th, 2011, Stock Award Agreement?

A. I was aware that he was not in possession of that.

Q. And who made you aware of that?

A. Mr. Sokota.

Q. And did you ask Mr. Sokota to respond to that inquiry, or did Mr. Sokota just tell you?

A. I don't recall.

Q. And at the point in time that you had

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2 that discussion with Mr. Sokota, you were already
3 aware that Mr. Sokota had signed it after
4 Mr. Jendras had signed it; correct?

5 A. I was.

6 Q. And did you give an instruction to
7 Mr. Sokota not to return the fully executed
8 January 25th, 2011, Stock Award Agreement to
9 Mr. Jendras?

10 A. We discussed the issue and agreed that
11 he should not return.

12 Q. And did that conversation take place
13 before this email of March 24th that was sent by
14 Mr. Sokota to Ms. Grimmer with the proposed new
15 terms?

16 A. Yes.

17 Q. And did you also tell Mr. Sokota to
18 not share with Mr. Jendras the fact that there had
19 already been an execution of the January 25th, 2011,
20 award by Mr. Sokota?

21 MR. PEIKES: Objection to the form.

22 THE WITNESS: Could you read back the
23 question, please.

24 (Question read)

25 A. It was not discussed.

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2 Q. And when you had this conversation with
3 Mr. Datta, did you also discuss with him the
4 direction that had been made not to deliver the
5 fully executed January 25th, 2011, stock award to
6 Mr. Jendras?

7 A. I don't recall.

8 Q. Did Mr. Datta share with you any of
9 the conversations he was having with Mr. Jendras
10 regarding the terms of the voluntary separation from
11 the company?

12 A. Yes.

13 Q. And in connection with those discussions,
14 did he indicate to you what he said regarding the
15 status of the January 25, 2011, stock award that had
16 previously been executed by Mr. Jendras?

17 A. I don't remember.

18 Q. Did he share with you what it was he
19 said to Mr. Jendras regarding the question of
20 whether it had been signed by anyone at AboveNet?

21 MR. PEIKES: Objection to the form.

22 A. I don't remember.

23 Q. Did he indicate to you whether he had
24 advised Mr. Jendras that the position of AboveNet
25 was that the January 25th, 2011, stock award had

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2 Q. Did you have a conversation with
3 Mr. Datta regarding a change in the terms of the
4 January 25th, 2011, Stock Award Agreement that had
5 been executed by Mr. Jendras and Mr. Sokota?

6 A. Yes.

7 Q. And did you have that conversation
8 with Mr. Datta at or about the time that you
9 discussed it with Mr. Sokota, as it related to a
10 change?

11 A. I don't remember.

12 Q. And the conversation that took place
13 with Mr. Datta, did that take place in person or on
14 the telephone?

15 A. I don't recall.

16 Q. Was there anyone else involved in that
17 discussion?

18 A. I don't recall.

19 Q. To the extent you remember a
20 conversation with Mr. Datta, what did you say to
21 him, and what did he say to you?

22 A. That -- the essence of the conversation
23 was that the terms of Mr. Jendras' stock agreement
24 had been changed to require him to -- to continue
25 his employment and be here as all the stock vested.

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2 no legal effect, because it had not been executed
3 by AboveNet?

4 A. He did not indicate that to me.

5 Q. I'm going to show you a document that
6 was marked at a prior deposition as Plaintiff's
7 Exhibit 36. (Handing) This, too, is a document
8 that was provided by your attorneys. And I want
9 you to take a moment to look at it, because I'm
10 going to ask you about it.

11 (Witness peruses exhibit)

12 A. Okay.

13 Q. Have you seen this document before
14 today?

15 A. Yes.

16 Q. And do you know who prepared this
17 document?

18 A. Rajly.

19 Q. And when did you see this document for
20 the first time?

21 A. Friday.

22 Q. So, prior to Friday, you did not see it?

23 A. No.

24 Q. And do you know when Mr. Datta prepared
25 this?

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 05:21:18 2 A. I don't, except for what's indicated
 05:21:25 3 here on the email.
 05:21:35 4 Q. You're talking about the June 22nd date
 05:21:40 5 on the tool?
 05:21:45 6 A. Yes.
 05:21:50 7 Q. Okay. Do you know whether that was,
 05:21:55 8 in fact, the day that that was created by Mr. Oatta?
 05:22:00 9 A. I do not.
 05:22:05 10 Q. Now, I want to refer you to the second
 05:22:10 11 full paragraph of this document. It says, "I
 05:22:15 12 indicated to Doug that all of this discussion around
 05:22:20 13 his desire for a package and his belief that he's
 05:22:25 14 owed all the stock and all the contractual terms in
 05:22:30 15 his agreement, had put me in a difficult position.
 05:22:35 16 His view that the future stock vests in 2012 and
 05:22:40 17 2013 are his entitlements, is not correct. I
 05:22:45 18 indicated that he does not have a fully executed
 05:22:50 19 agreement relative to that future stock vest; and
 05:22:55 20 that based on these discussions, that we will be
 05:23:00 21 making a change to the terms of those stock vests
 05:23:05 22 that removes any reference to accelerated vesting."
 05:23:10 23 Was that a reference to the change
 05:23:15 24 you discussed with Mr. Sokota regarding the
 05:23:20 25 terms of the January 25th, 2011, award?

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 05:23:25 2 A. I would assume so, but I can't be sure.
 05:23:30 3 Q. And the reference to Mr. Lehdas not
 05:23:35 4 having a fully executed agreement, was that a
 05:23:40 5 reference to the January 25th, 2011, Stock Award
 05:23:45 6 Agreement, as well?
 05:23:50 7 A. I don't know.
 05:23:55 8 Q. Were you aware that Mr. Oatta had
 05:24:00 9 expressed the view memorialized in this memorandum
 05:24:05 10 to Mr. Lehdas, that he didn't have a fully executed
 05:24:10 11 agreement relative to future stock vests?
 05:24:15 12 MR. PEIKES: Objection to the form.
 05:24:20 13 A. Well, I'm reading his view here; so,
 05:24:25 14 I assume that's his view.
 05:24:30 15 Q. Did Mr. Oatta share with you, at the
 05:24:35 16 time that he was having conversations with
 05:24:40 17 Mr. Lehdas regarding the terms of a voluntary
 05:24:45 18 separation, that he told Mr. Lehdas that he didn't
 05:24:50 19 have a fully executed agreement for the January 25th,
 05:24:55 20 2011, stock award?
 05:25:00 21 MR. PEIKES: Objection to the form.
 05:25:05 22 A. I don't recall.
 05:25:10 23 Q. Did you provide any instruction to
 05:25:15 24 Mr. Oatta to state to Mr. Lehdas that he couldn't
 05:25:20 25 enforce the January 25th, 2011, stock award, because

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 05:25:25 2 he didn't have a fully executed Stock Award
 05:25:30 3 Agreement?
 05:25:35 4 A. No.
 05:25:40 5 Q. Do you know if anybody else gave such
 05:25:45 6 an instruction to Mr. Oatta?
 05:25:50 7 A. I don't know.
 05:25:55 8 Q. Did Mr. Oatta keep you advised of the
 05:26:00 9 status of his discussions with Mr. Lehdas regarding
 05:26:05 10 the terms of a voluntary separation?
 05:26:10 11 A. We discussed it once or twice.
 05:26:15 12 Q. And did he share with you the fact that
 05:26:20 13 it was Mr. Lehdas' view that he was entitled to
 05:26:25 14 accelerated vesting of any unvested stock units if
 05:26:30 15 he elected to voluntarily separate from the company?
 05:26:35 16 A. Yes.
 05:26:40 17 Q. And were you aware of that position
 05:26:45 18 before you gave the instruction to Mr. Sokota to
 05:26:50 19 alter the terms of the January 25th, 2011, Stock
 05:26:55 20 Award Agreement?
 05:27:00 21 MR. PEIKES: Objection to the form.
 05:27:05 22 A. I don't recall the timing of all that.
 05:27:10 23 Q. Now, I want to redirect your attention
 05:27:15 24 to the 2010 review for Mr. Lehdas.
 05:27:20 25 Do you recall whether Mr. Lehdas

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 05:27:25 2 took exception to the characterization in the
 05:27:30 3 review that he was considered difficult to
 05:27:35 4 approach by some salespeople?
 05:27:40 5 A. He did.
 05:27:45 6 Q. And did he share that point of view
 05:27:50 7 with you?
 05:27:55 8 A. Yes.
 05:28:00 9 Q. And did he indicate to you that he
 05:28:05 10 thought it was inaccurate?
 05:28:10 11 A. Yes.
 05:28:15 12 Q. And how did he share that with you?
 05:28:20 13 A. By saying, "It's inaccurate."
 05:28:25 14 Q. And do you recall whether he shared
 05:28:30 15 this with you in person or by telephone?
 05:28:35 16 A. Well, when I gave him that input during
 05:28:40 17 our March 7th annual session, he told me that he
 05:28:45 18 thought that was inaccurate and that he had a good
 05:28:50 19 relationship with all his salespeople.
 05:28:55 20 Q. And what, if anything, did you do or
 05:29:00 21 say in response to that?
 05:29:05 22 A. I told him that I disagreed and that --
 05:29:10 23 you know, I indicated that as I -- as I had written
 05:29:15 24 in his appraisal, some of it might be perception
 05:29:20 25 rather than reality, but it's something that he

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2 ought to keep in mind when dealing with the sales
3 folks.4 Q. Did he have any subsequent conversations
5 with you regarding the content of your review of his
6 2010 performance?

7 A. No.

8 Q. Did you have any communications with
9 him subsequent to this meeting relating to his
10 performance at AboveNet?

11 A. No.

12 Q. I'm going to show you a document that
13 was marked previously -- I'm sorry, I gave you the
14 first page of my copy. I'm sorry.15 The document that was marked as
16 Plaintiff's Exhibit 3a. (Marking)

17 A. Mm-hmm.

18 Q. Take a moment, if you could, to look at
19 this. I'm going to ask you, after you've looked at
20 it, whether you've seen this before today.

21 (Witness peruses exhibit)

22 A. Okay.

23 Q. Have you seen this document before
24 today?

25 A. Friday.

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2 Q. Now, I want to direct your attention to
3 the second page of this document.

4 A. Okay.

5 Q. And I would say four lines down from
6 the top of that first line on that page, there's a
7 statement that says, "After some discussion, he
8 asked what I thought was reasonable."9 I told him that I was not authorized to
10 discuss the specifics of a package with him. I was
11 trying to determine if there was something
12 reasonable that I could take to the board, et
13 cetera, positioned as an amicable separation. He
14 said that this implies that I didn't think what he
15 was asking for was reasonable, which I said was
16 true.17 In the end, I said that getting Zbfi
18 stock plus severance through the end of the year,
19 Zbfi, is something that I would take forward for
20 consideration.21 He said he needed to speak with people
22 to understand his position, but that, didn't
23 understand why he should negotiate on the contract.24 I reminded him that the company didn't
25 think he has a case for getting the full contractual

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1 William LaPerch

2 Q. And you're certain you didn't see this
3 before Friday; is that correct?

4 A. I'm not certain. 95 percent.

5 Q. Do you know who the author of this
6 document is?

7 A. Rajju.

8 Q. Is that your best guess, or is that to
9 your knowledge?

10 A. My best guess.

11 Q. And on what do you base your conclusion
12 that Mr. Datta is the author of this document?13 A. Just talking about management style,
14 and in the third paragraph he said -- he says that,
15 "I've been running product development for a long
16 time," and Rajju is who ran product development.17 Q. You're referring to the third full
18 paragraph?19 A. Third full paragraph, four lines from
20 the bottom, it says, "I reminded him that my level
21 of engagement on things like product productivity
22 may allow him to get a sense of my impact."23 Q. Is that the paragraph that begins with
24 the words, "Doug reiterated his view..."?

25 A. Yes.

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2 package."

3 Did Mr. Datta share with you these
4 thoughts memorialized in this document during
5 the time that he was having conversations with
6 Mr. Jendras relating to the terms of the
7 voluntary separation?8 A. Mr. Datta shared with me the fact that
9 he was having conversations with Mr. Jendras
10 discussing if things couldn't be worked out between
11 them, and they couldn't figure out how to make the
12 organization successful, you know, would Doug
13 consider taking a package from us to leave.14 Q. And does the term "2011 stock plus
15 severance," have any meaning to you as it's set
16 forth in this document?

17 A. Where are you reading?

18 Q. The second-to-last -- or third-to-last
19 sentence; I'm sorry. In the end, I said that
20 getting 2011 stock plus severance through the end of
21 the year, 2011, is something I would take forward
22 for consideration.

23 A. Yes, it does have meaning.

24 Q. And Mr. Datta discussed that concept
25 with you when he was having these conversations with

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2 Mr. Lehdias!

3 A. Yes.

4 Q. And what was your understanding of what

5 that term meant?

6 A. We had -- we had a senior vice

7 president of sales, Mr. Jacquay, that was leaving

8 the company in July. And we had negotiated a deal

9 with him, where his last day of work would be July.

10 He would be carried on the payroll through December,

11 and he would be around for a 2011 vesting in

12 November of some stock. That's what that means to

13 me.

14 Q. And if I can just draw out a little bit

15 more: does that mean, then, that what you

16 understood AboutNet as willing to offer Mr. Lehdias,

17 was something similar to what you just described was

18 the subject of an agreement with Mr. Jacquay?

19 A. Yes.

20 Q. And so, that would mean that

21 Mr. Lehdias would have to forego any stock that

22 would have vested after 2011, but would have perhaps

23 vested on an accelerated basis if he left the

24 company voluntarily; is that correct?

25 A. No.

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2 a vesting schedule that involved some vesting that

3 was to take place later in 2011; correct?

4 A. Correct.

5 MR. PEIKES: Just to be clear, you're

6 referring to the September 8th, 2008, award?

7 MR. WEINSTEIN: Yes. Did I misstate it

8 again?

9 MR. PEIKES: Yes. You said,

10 "September 8th, 2010."

11 MR. WEINSTEIN: Okay. I have done that

12 previously; I apologize for any confusion.

13 Q. For the sake of clarity, referring now

14 to the September 8th, 2010, award --

15 MR. PEIKES: '08.

16 A. '08.

17 MR. WEINSTEIN: I did it again. It's

18 just amazing...

19 Q. Referring back to the September 8th,

20 2008, award -- and for the sake of clarity, so

21 neither you nor I are speaking in a vacuum, I'm

22 going to outline the document. And that's Exhibit 19,

23 which I will hand for you.

24 MR. PEIKES: I have it. (Handing)

25 Q. Okay. Me has it; but how, I head to

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2 Q. Okay. Let me draw it out differently,

3 then, since that didn't seem to register as accurate

4 from your point of view.

5 Let me ask you, then: What did it

6 mean, as you understood it, as it related to

7 Mr. Lehdias?

8 A. What did what mean?

9 Q. The term set forth in Mr. Oatta's --

10 what we assumed for the sake of this question as

11 Mr. Oatta's document?

12 A. What it meant to me?

13 Q. Yes. "2011 stock plus severance," what

14 did it mean?

15 A. It meant that we would offer the same

16 deal as we were offering for.

17 Q. So, then, to put it into concrete

18 terms: At the time these discussions were taking

19 place, there had already been three stock awards

20 presented to the board and approved for Mr. Lehdias.

21 That would've been the September 8th, 2008, award;

22 the December 10th, 2010, award; and the

23 January 25th, 2011, award; correct?

24 A. Correct.

25 Q. And the September 8th, 2010, award had

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2 have it. But that's helpful; I appreciate it.

3 Okay. I have it, too, now.

4 Your attorney has obtained in front of

5 you the document that was previously marked as

6 Plaintiff's Exhibit 19, and that reflects the fact

7 that the subject of the stock units that were the

8 subject of that award would vest on November 15th,

9 2011; correct?

10 A. Yes.

11 Q. And so, to the extent that this

12 particular Stock Unit Agreement had a vesting

13 schedule that involved future vesting in 2011, if

14 I understand your testimony, you're saying that the

15 position of the company was that Mr. Lehdias, as

16 part of an agreed, voluntary separation, would

17 receive whatever stock units were to vest later in

18 2011, under the terms of the Stock Unit Agreement

19 dated September 8th, 2008; correct?

20 A. That's what was offered.

21 Q. Now, there were also two other Stock

22 Award Agreements, which I've asked you about, one

23 of which was the December 20th, 2010, agreement

24 that was previously marked as Plaintiff's

25 Exhibit 21.

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A. Right.

Q. And the offer was Exhibit 23. And --

MR. PEIKES: I've shown him both of those.

MR. WEINSTEIN: I appreciate that.

Now, I have to catch up, Ioh.

Q. I have 21, and I have 73.

Directing your attention to 21 --

that's the one dated December 20th, 2011 -- that had

a vesting schedule that also contemplated a vesting

of the units on November 15th, 2011; correct?

A. Correct.

Q. And as to those units, the position of the company was that Mr. Lehdas, as part of the terms of the voluntary separation, would be entitled to receive those, as well, even if he separated prior to November 15th, 2011; is that correct?

A. That was our initial offering, yes.

Q. And now, we're directing your attention to Exhibit 23, which your attorney was good enough to provide to you there. That had a vesting schedule that contemplated vesting of a portion of these units in 2012 and 2013; correct?

A. Correct.

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Q. And those units totaled -- actually,

I was the entire stock award, correct, that was going to vest at -- 14,000 was going to vest on November 16th, 2012; and 7,000 units were going to vest on November 16th, 2013; correct?

A. Correct.

Q. And so, the position of the company regarding the terms of a voluntary separation was that Mr. Lehdas would not be entitled to the stock units that were the subject of the January 25th, 2011, award; is that correct?

A. That was what we offered, yes.

Q. And were you made aware that Mr. Lehdas rejected that offer?

A. Yes.

Q. And was it after you became aware of Mr. Lehdas' response, that you spoke to Mr. Sukota regarding a change in the terms of the January 25th, 2011, award?

A. I don't recall.

Q. Now, forgive me if I've asked this already; but just for the sake of rounding out the record: After Mr. Sukota proffered the revised January 25, 2011, Stock Award Agreement, do you

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I knew it was presented to Mr. Lehdas!

A. I know it was written on the email that we saw, where Gina Gylmes was directed to present it to Mr. Lehdas.

Q. And were you made aware of what, if any, response Mr. Lehdas had to the proposed change in the terms of the January 25th, 2011, award?

A. Yes; I was made aware that he refused to sign it.

Q. And who told you that?

A. I don't remember. It was either Rajji or Rob.

Q. Now, once Mr. Lehdas rejected the proposed change in the January 25th, 2011, stock award, to your knowledge, were there continued discussions relating to the terms of a voluntary separation between Mr. Lehdas and Mr. Oatta, or anyone else at the company?

A. I'm not aware of the timing of all that. I couldn't say, either way.

Q. Now, during the period of time that Mr. Lehdas was having these discussions relating to a possible voluntary separation, was he working from home?

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William LaPerch

A. I didn't see him around the office.

Q. So, did you conclude, then, that he was working from home?

A. I didn't draw any conclusions. I just didn't see him around the office.

Q. Did you see Mr. Oatta in Mr. Lehdas' office in White Plains?

MR. PEIKES: Objection to the form.

A. When Mr. Datta wasn't traveling, he was in his office in White Plains, yes.

Q. And his office was formerly Mr. Lehdas' office; correct?

A. Correct.

Q. And during the period of time that followed Mr. Oatta taking over Mr. Lehdas' physical office in White Plains, was Mr. Lehdas being called upon to perform various operations' functions for AbouNeel?

A. Mr. Lehdas was reporting to Mr. Oatta; so, that would be a question for him.

Q. So, as you're sitting here today, you have no knowledge of what, if any, operations' functions Mr. Lehdas was performing once he started working from home; is that correct, sir?

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William LaPerch

MR. DEJES: Objection to the form.

A. When Mr. Lehdas was organizationally

reorganized under Mr. Oatta, Mr. Lehdas

communicated only with Mr. Oatta and no longer with me.

Q. And can I assume from your response

that you didn't communicate with him, either?

A. We didn't have any communication.

MR. WEINSTEIN: Please mark this as

Plaintiff's Exhibit 44.

(Whereupon, email chain was marked as Plaintiff's Exhibit 44, for id.)

Q. I show you what's been marked as

Plaintiff's Exhibit 44. It's an e-mail chain.

At the bottom of the page there's an e-mail from

Gina Thomas -- who I think you've identified as your assistant; correct?

A. Correct.

Q. -- addressed to you, dated May 19th,

2011. Subject: update from Scott W. And it reads,

"We and Tom have been working with B of A --" I

assume that's a reference to Bank of America.

Is that a client of AboveNet?

A. It is.

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William LaPerch

Q. -- all right. The problem is still

not fixed. It got kicked out this morning, and

we'll go back at 8 a.m. tonight to resolve. They

couldn't find the police enclosure. It's hard

where we solicited with ATT; so, it may be an ATT

issue, but he's not sure yet. There are access

issues."

And the next email in this chain is

from you, to Mr. Lehdas, on that same date, at

10:09 a.m. It says, "Please get involved right away.

I have received emails from customers."

Is that an email you sent to Mr. Lehdas?

A. From my cell phone, yes.

Q. So, you were, in fact, communicating

with him on May 19, 2011, to address an issue

identified by your administrative assistant with

regard to Bank of America; is that correct?

A. Actually, the issue was identified by

customers who sent me emails. My email assistant --

or my assistant didn't identify the issue.

Q. But in response, your response to this

was to have Mr. Lehdas address it; correct?

A. My response to this was to get a status

report from the network management center, which my

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assistant provided. And then, based on that, I

asked Mr. Lehdas to get involved in speaking with

the customers.

Q. And to your knowledge, did Mr. Lehdas

get involved with the customers?

A. Probably.

Q. You can add that to the note.

A. (Witness comes in)

MR. WEINSTEIN: Mark this, please, as

Exhibit 45.

(Whereupon, three-page email chain Bates

sidemp P00089 - 9; was marked as Plaintiff's

Exhibit 45, for id.)

Q. Mr. LaPerch, I'm showing you what has

been marked as Plaintiff's Exhibit 45.

(Handing) It's an e-mail chain consisting of three

pages.

And the email I wanted to ask you about is from you,

to Mr. Lehdas, dated May 19th, 2011. And it's a

series of questions relating to a particular Tiber

laundry; correct?

A. Right.

Q. Did this have any relationship to the

subject of the other email I just asked you about?

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William LaPerch

A. I have no idea.

Q. Okay. There are a series of questions

that appear to have some answers. Were those the

answers provided by Mr. Lehdas?

A. Actually -- well -- I'm sorry.

Q. Go ahead. What were you going to say?

A. No. I was looking at the customers

affected below, but that just says whose -- whose

spans are down and being restored. It doesn't say

anything about Bank of America.

Q. Okay. Who were the customers that were

enumerated in this email chain?

A. Yes; Alliance Berthstein; Deutsch Bank;

and Rabo Bank, a Dutch bank.

Q. And there was a need to restore service

to these particular customers?

A. We had an outage. It was a need to

restore service for all customers. These were the

ones that were still down at the time.

Q. And did you ask Mr. Lehdas to address

issues relating to this outage?

A. I did.

Q. And did he respond to your questions?

A. I don't know if he responded. Somebody

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William LaPerch

1

2 responded.

3 Q. Well, you'll see in this email chain it

4 says, on May 19th, 2011, at 5:25 a.m. Doug Jendras

5 wrote, "Answers below." And then, it appears that

6 he forwarded your questions with his answers;

7 correct!

8 A. Yes.

9 Q. And he's responding to your questions.

10 "Who from AboveNet is on site?" He says, "Matta

11 Saito is on site."

12 Was that someone in operations --

13 A. It is.

14 Q. -- who reported to Mr. Jendras?

15 A. But the point I was trying to make is

16 that I don't know if he wrote these answers, or they

17 were cut and pasted from somebody he asked. That's

18 a minor point.

19 Q. Do you have any reason to think that

20 somebody other than he wrote this?

21 A. Yes; all the time.

22 Q. Did you inquire with Mr. Jendras on

23 this subject?

24 A. No. It didn't matter to me.

25 Q. Rich and Mike Shatzberg, were those

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William LaPerch

1

2 A. No.

3 Q. And your third question: "I would like

4 you to please call Alliance Berhsteih and update

5 them on this. We sought a long time digging out of

6 a hole with them on performance. I don't want to

7 get back in that hole."

8 His response was, "Alliance Gerhsteih

9 is so. I will call them."

10 And issue with that response?

11 A. No.

12 Q. And then, you wrote back, on Tuesday --

13 on Thursday -- I'm sorry -- Thursday, May 19th,

14 "okay. Let me know who you speak to."

15 And that was a reference to

16 Mr. Jendras' reference to the fact that he would

17 call Alliance Berhsteih!

18 A. Yes.

19 MR. WEINSTEIN: Plaintiff's 46.

20 (Whereupon, two-page email chain Bates

21 stamped P000094 - 95 was marked as Plaintiff's

22 Exhibit d6, for id.)

23 Q. Mr. LaPerch, I'm going to show you

24 what's been marked as Plaintiff's Exhibit 46.

25 (Holding)

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William LaPerch

1

2 operations people!

3 A. Yes.

4 Q. And he's saying, "Rich and Mike

5 Shatzberg have been on the phone all day. Tim

6 Mitchell is on jury duty; so, Mike is performing

7 double duty today."

8 The next question is, "Why is it taking

9 so long to solve back up five to seven customers?"

10 The fiber was out of the ground four hours ago."

11 And then the response is, "The cable

12 was pulled out of the splice case, and about 14

13 fibers broke where the cable enters the case. We

14 have spliced up the broken fibers with the exception

15 of USS, OB, and Rabo, who were up on the order.

16 We're still trying. If we can't fix the three

17 remaining, and since there is no stock, we have to

18 find a new path. The NYA team is packed, and all

19 routes have been difficult to find. Kevin is still

20 searching."

21 Do you know who Kevin was?

22 A. He's one of the field techs.

23 Q. And then, your -- did you have any

24 issue with this response as related to your

25 question, why is it taking so long?

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William LaPerch

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2 Just for the record, what has been

3 marked as Plaintiff's Exhibit d6 is a two-page email

4 chain, and I want to direct your attention to the

5 first page of this email chain. In the bottom of

6 the page is an e-mail from you, to Doug Jendras,

7 dated Saturday, May 21, 2011; correct?

8 A. Correct.

9 Q. In this email you write to Mr. Jendras,

10 you say, "Doug, I have highlighted the job. I would

11 like some explanation on the variance on the

12 completed job report detail tab. In the highlight

13 is yellow, then I need a construction variance

14 explanation. If the highlight is red, I need an

15 equipment variance explanation. It appears there

16 may be something not right about the equipment

17 CAPEX, as there are numerous jobs where equipment

18 CAPEX is budgeted, but not used.

19 With the velocity of our business

20 lately, I am anxious to ensure that CAPEX numbers

21 I am looking at are vetted for accuracy. I am

22 equally interested in understanding the realities

23 for over and under spending in the field. Please

24 work with Joe's team for any additional financial

25 input you may need. Please have this done by

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William LaPerch

June 3rd."

Now, you make a direction to

Mr. Jehdras in this email that he should work with Joe's team. Who is Joe?

A. CFO.

Q. And what was Joe's full name?

A. Clavarella.

Q. And in response to this email that you wrote on May 21, did Mr. Jehdras respond by June 3rd, as you directed him to?

A. I don't remember.

Q. Well, you'll see up on the too, there was an e-mail sent to you on May 23rd in response to your email; correct?

A. Correct.

Q. And there is some response to some of your questions in your email; correct?

A. No.

Q. He says, "Construction variances are always due to the average of averages assumptions in the model, versus the reality of the situation, whether positive or negative. Equilibrium budgets are also created using standard costs or a BOM; so, there should be no surprise that those funds may not

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William LaPerch

oe used. Those budgets are never based on a search of the internal inventory that one tries to utilize first before something. I will attempt to provide explanations as close to June 3rd as possible."

You didn't consider that responsive to your email?

A. No.

Q. Did he, subsequent to this email, provide you with further detail?

A. I don't know.

Q. You don't know whether he did or he didn't?

A. That's correct.

MR. WEINSTEIN: Okay. Mark this.

(Whereupon, email chain Bates stamped

000096 - 104 was marked as Plaintiff's

Exhibit d7, for id.)

Q. Mr. LaPerch, I ask you to look at what's been marked as Plaintiff's Exhibit 47. This is an e-mail chain consisting of nine pages, with the last email dated Friday, June 10th, 2011, from Bill LaPerch, to Doug Jehdras. And I want to focus on the first page of this chain. And there's an e-mail from Mark Whiski.

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William LaPerch

Do you know who Mr. Whiski is?

A. He works in the network management center.

Q. And he's an employee of AboveNet?

A. He is.

Q. And he's indicating, "NY operations reports that all soliciting has been completed at this time. The NMC is in the process of contacting all customers to verify that their services have been restored."

It's a reference to an outage that occurred at certain customer sites?

A. It is.

Q. And then, there's a response or a further statement by Shanti Vartanian.

That person also is an employee of AboveNet?

A. He is.

Q. And he writes, on June 10th at 8:26:05 a.m., "At this time all customers have been notified and confirm their services are restored. Total outage time: 26 hours, 10 minutes."

You then wrote to Mr. Jehdras on Friday, June 10th, at 8:35 a.m. in connection with COMPU-TRAN SHORTHAND REPORTING

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William LaPerch

this email chain; correct?

A. Correct.

Q. You wrote to him, "I would like to know of any customer issues or dissatisfaction with our performance here. Bill LaPerch."

So, you were looking to Mr. Jehdras at that time to address whether or not there were customer issues or dissatisfaction; correct?

A. Right.

Q. Do you recall what happened after you sent this email to Mr. Jehdras?

A. I do not.

When outages are 26 hours long during the workweek and includes customers like are listed in the back, it's a cause of great concern for the CEO.

Q. And that was, of course, the reason why you reached out to Mr. Jehdras?

A. Mm-hmm.

Q. Okay. Thank you.

MR. WEINSTEIN: All right.

(Whereupon, email chain Bates stamped 000105 - 108 was marked as Plaintiff's Exhibit d8, for id.)

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William LaPerch

Q. Mr. LaPerch, I'd like you to look at what's been marked as Plaintiff's Exhibit 48. This is a four-page email chain. I'd like to focus you, for the moment, on an email that begins on the bottom part of the first page from Steve Ratliff. Is Mr. Ratliff an employee of AbouNet?

A. He is.

Q. And there appears to be a reference to certain customers noted by certain identification codes there. Do you see that there?

A. I do.

Q. And is this a reference to outages, as well, experienced by those customers?

A. Yes.

Q. And you then wrote on Sunday, June 12th, 2011, the same day that you, apparently, received this email from Mr. Ratliff, to Mr. Jendras; correct?

A. Yes.

Q. And you asked the question: "Is this work on our long haul or metro network? Is there a main --" Is that a reference to maintenance or something else?

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William LaPerch

A. Yes. During the weekend, there are planned times for doing work on the network. So, since this was a weekend, if it was a planned time, I would react differently than if it was an unplanned outage.

Q. "Is there a main --" maintenance, I guess that's abbreviated, as you just said. "Is there a maintenance that is going on over the scheduled time? There are many important customers on this route. Facebook, in particular."

Do you recall what the response was to your inquiry on Sunday, June 12th, to Mr. Jendras?

A. Nope. No.

MR. WEINSTEIN: Mark this, please, as Plaintiff's Exhibit 49.

(Whereupon, three-page email chain Bates stamped P000109 - 111 was marked as Plaintiff's Exhibit 49, for id.)

Q. This is an email chain that's been marked as Plaintiff's Exhibit 49. It consists of three pages. And the one I'm going to ask you about starts on the first page, and it's from Roger Patterson. (Handing)

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William LaPerch

(Witness peruses exhibit)

Do you see that there?

A. I do.

Q. And he's an employee of AbouNet; is that correct?

A. Correct.

Q. And he makes reference to repairs that are needed for certain damaged fiber. Do you see that there?

A. Yes.

Q. And can you tell from this email chain whether the damaged fiber had caused outages at certain customer sites?

A. Yes.

Q. And there is -- after Mr. Patterson recites the damage, there is a further email from Justin Baltimore. Do you see that there?

A. Right.

Q. He also is an employee of AbouNet?

A. He is.

Q. And is he in operations or somewhere else?

A. Network management center.

Q. Network management center.

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William LaPerch

And he writes, "Optical operations has advised that the third-party fiber vendor have technicians at Hudson Street and Ninth Avenue, New York. The fiber vendor are currently checking to see if there are some fibers to route around the damaged section. The estimated time to restore is still unknown at this time. More updates will follow as soon as they are made available."

In response to this email of June 17th, 2011, at 1:15 in the morning, it appears you, then, wrote to Mr. Jendras; correct?

A. I did.

Q. And you asked him, "Who is the third-party vendor?" Correct?

A. I did.

Q. And why were you reaching out to Mr. Jendras in connection with this issue?

A. Because he is responsible for the people that are in the network management center and in the field that would be on site, and he would know who the third-party vendor was.

Q. And did he, in fact, respond to your inquiry?

A. He did.

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William LaPerch

06:18:22 2 Q. And he identified the third party
06:19:24 3 whether in his email of Friday, June 11th, shortly
06:19:24 4 after you sent your email, as Global Crossing;
06:19:24 5 correct?

06:19:24 6 A. Correct.

06:19:24 7 Q. And he gave you some further
06:19:24 8 information relating to the status of the effort
06:19:24 9 being undertaken by Global Crossing; correct?

06:19:24 10 A. Yes.

06:19:24 11 Q. And he indicated service was up on a
06:19:24 12 temporary. Meaning, I assume, a temporary basis;
06:19:24 13 correct?

06:19:24 14 A. Correct.

06:20:29 15 MR. WEINSTEIN: Exhibit 50, please.
06:20:30 16 (Whereupon, four-page email chain dates
06:20:42 17 stamped 06/08/11 - 07 was marked as Plaintiff's
06:20:51 18 Exhibit 50, for id.)

06:21:25 19 Q. Mr. LaPerch, I've shown you an email
06:21:31 20 chain of four pages, and I want to direct your
06:21:41 21 attention to the second page, which contains an
06:21:46 22 email from you, to Mr. Jendras, dated April 28th,
06:21:51 23 2011. And it says, "Oooh, please provide an
06:21:54 24 in-depth evaluation, working with legal if
06:21:59 25 necessary, to determine the impact of this new under

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William LaPerch

06:22:01 2 on our business, especially in areas where access
06:22:05 3 has
06:22:05 4 been an issue. Would like to see it in a week."

06:22:07 5 And there is what looks like an article
06:22:10 6 of some kind that you attach to your email; correct?

06:22:11 7 A. Right, yes.

06:22:14 8 Q. And it's an article containing a
06:22:20 9 Pole Attachment Report and order on reconsideration.
06:22:22 10 Can you tell me why you had an interest
06:22:24 11 in an in-depth evaluation of the impact of this
06:22:24 12 new order as it's referenced in the article?

06:22:41 13 A. Yes.

06:22:42 14 Q. You can proceed, if you can.

06:22:41 15 A. Okay, yeah. The difficulty that we
06:22:47 16 had in operating in the State of New Jersey was tied
06:22:50 17 to the difficulty in doing business on PSE&G poles.
06:22:54 18 In other states where we had pole attachments as
06:22:57 19 well, the regulators - the electric companies, and
06:23:00 20 telephone companies - actually run very tight
06:23:02 21 control over access to those. They make
06:23:02 22 installation and repair of our fiber on those
06:23:02 23 poles very difficult. This order seemed to
06:23:02 24 alleviate some of that difficulty in doing business,
06:23:02 25 and I wanted an assessment from legal and the people

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William LaPerch

06:23:14 2 out in the field, the people that actually do the
06:23:18 3 work and deal with the pole people, on what the
06:23:21 4 effect might be on our existing business.

06:23:25 5 Q. And obviously, the request being made
06:23:29 6 for that evaluation was directed to Mr. Jendras?

06:23:31 7 A. It was directed to Mr. Jendras to get
06:23:34 8 help from legal and his own team to find out what
06:23:38 9 the impact is, yes.

06:23:40 10 Q. And he, in fact, responded within the
06:23:42 11 week to your request, as you directed him to;
06:23:46 12 correct?

06:23:46 13 A. He answered my email, yes.

06:23:47 14 Q. And he did so on May 3rd, 2011;
06:23:47 15 correct?

06:23:47 16 A. Yes.

06:23:50 17 Q. And he indicated that -- in his first
06:23:50 18 four humbled responses, that, the roughly -- it
06:23:56 19 I'm reading this right -- \$35,000 of annual fees
06:24:00 20 will not be impacted. And he writes, "See attached
06:24:03 21 for estimated breakdown 2010. Fees will go up in
06:24:06 22 New Jersey, due to overcosts."

06:24:06 23 Did you know what he meant there?

06:24:08 24 A. Yes.

06:24:08 25 Q. And he goes on to say, in the second

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William LaPerch

06:24:09 2 item of his response, "The order only has
06:24:12 3 jurisdiction in Maryland, Pennsylvania, and
06:24:15 4 Virginia, where we operate. This covers roughly
06:24:18 5 \$256 of cost. It does not directly impact pole
06:24:21 6 rates and make-ready processes in the 20 states that
06:24:24 7 have certified pole attachment rates, themselves,
06:24:27 8 of which the majority of our aerial business
06:24:30 9 operates. See attached for certified states."

06:24:33 10 And then he says, "The order has no jurisdiction
06:24:36 11 over the power source. So, the PSE&G make-ready
06:24:39 12 issues will not be impacted."

06:24:42 13 "Four: We currently do not have any
06:24:45 14 make-ready process issues in Maryland, Pennsylvania,
06:24:48 15 or Virginia."

06:24:51 16 In summary, this new order has
06:24:54 17 relatively no impact on AbouNet."

06:24:57 18 Did you agree with his assessment as
06:25:00 19 he laid it out here?

06:25:03 20 A. I had no reason to disagree.

06:25:06 21 Q. And then, there's an email in this
06:25:09 22 chain from Bill Young, to Doug Jendras.
06:25:12 23 Do you know who Mr. Young is?

06:25:15 24 A. I do.

06:25:18 25 Q. Who is Mr. Young?

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William LaPerch

A. He runs field operations.

Q. And he writes to Mr. Jendras on

May 3rd, "Thanks, Doug. Much ado about nothing."

Q. Did you agree with Mr. Young's assessment?

MR. PERKES: Objection to the form.

A. I don't know what he's talking about.

Q. Okay. So, you don't have an opinion one way or the other?

A. No.

THE WITNESS: Time for a two-minute break.

MR. WEINSTEIN: Absolutely.

(Recess held from 4:23 to 4:34 p.m.)

Q. Mr. LaPerch, I want to show you a document that was marked at a prior deposition --

A. Okay.

Q. -- as Plaintiff's Exhibit 40, and I'll give you a moment to look at that, please.

(Handing)

(Witness peruses exhibit)

A. Okay.

Q. Did you see this email before

Mr. Sokota sent it on Monday, June 6th, 2011?

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William LaPerch

Q. I see. That's the sentence, "We would

agree that Doug would have accelerated vesting of all stock units held by him, including those under the disputed agreement granted January 25th, in the event of a company change of control or termination of his employment without cause prior to December 31, 2011."

Q. That's the part that you don't recall having any understanding of?

A. I don't understand what that means. I need more clarity on what that means.

Q. Well, I can't speak for Mr. Sokota, but what I want to ask you, based on my understanding of this email, is whether -- in looking at this, whether, number one, as set forth in the first sentence, Mr. Sokota discussed with you a package for Mr. Jendras that would be based on the same terms reposed by the company on its AK dated May 3, 2011, from Mr. Jacquay.

A. I am familiar with that, yes.

Q. And were you also -- when you say you're familiar with that, you're referring to what's set forth as the deal that Mr. Jacquay struck with the company that's disclosed in the AK dated

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William LaPerch

A. No.

Q. Did he discuss the content of this email with you before it was sent, to the best of your knowledge?

A. We had ongoing discussions about the nature of settlement we would offer Mr. Jendras.

Q. And the terms that are set forth in this email, were they terms that he had -- withdrawn.

The terms that are set forth in

this email, were they terms that Mr. Sokota had discussed with you?

A. Rob and I had an open dialog about this, this whole settlement process. I'm not familiar or don't understand the context of this sentence, where it says, "We would agree that Doug would have accelerated vesting in all stock units held by him, including those under the disputed agreement granted January 25th."

Q. And you're referencing a sentence that is towards the end of this paragraph?

A. Just in the middle. Right in the middle.

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William LaPerch

May 3, 2011?

A. Yes.

Q. Were you also aware that Mr. Sokota was proposing that the terms of a voluntary separation should be the same general deal that had been struck with Mr. Jacquay?

A. Yeah, same general deal.

Q. And so, did you understand, then, that when Mr. Sokota wrote this, he was, among other things, proposing that Mr. Jendras would keep his current position and would work from his home until July 15th? Did you understand that?

A. I understand it from reading this document.

Q. Okay. So, Mr. Sokota didn't share that detail with you; is that correct?

A. Well, we had ongoing discussions that Doug and I would get the same deal, which means they'll both stop working, roughly, in July. I think Ioc's last day may have been July 1st or something. I'm not sure.

Q. Now, redirecting your attention to the sentence that you were saying you didn't understand. There's a sentence that follows that one that says,

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William LaPerch

"In connection with his separation from the company, on December 31, 2011, Doug would forfeit all unvested stock units held by him as of that date."

Did you understand what that meant?

A. Yes.

Q. What did that mean, sir?

A. It means that the stock units that vested in 2012 and 2013 would be forfeited.

Q. And those were the stock units that were enumerated in the January 25, 2011, stock award, correct?

A. Correct.

Q. And this agreement that was being proposed by Mr. Sokota was conceptually based on what would be a voluntary separation by Mr. Jendras, correct?

A. Yes.

Q. And to the extent that there was a contemplated voluntary separation that would take place on December 31, 2011, and to the extent that he would be forfeiting any stock units provided for in the January 25th, 2011, Stock Award Agreement, had there been any presentation of this proposed change in the January 25th, 2011, stock award to

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William LaPerch

MR. WEINSTEIN: I don't want to argue with you. I don't agree with you.

MR. PEIKES: Well, if you're misleading the witness, that's a problem.

MR. WEINSTEIN: I don't want to burden this record. I don't think you're right at all, by the way. And I don't want to debate that point with you.

MR. PEIKES: Well, then, don't ask questions that assume that something is untrue. It's completely untrue. It's a complete mischaracterization of the agreement.

MR. WEINSTEIN: I don't agree with you.

MR. PEIKES: Then, fine, I'm going to object to the question and instruct him not to answer.

MR. WEINSTEIN: Then, fine. I don't agree with you and leave it at that.

MR. PEIKES: Okay. Go on.

Q. Let me show you the January 25, 2011, award that had been the subject of your earlier testimony and was previously marked as Plaintiff's Exhibit 23.

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William LaPerch

the Compensation Committee?

MR. PEIKES: Objection to the form.

You can answer it if you understand the question.

A. I don't understand the question.

Q. Okay. This represented a change, did it not, in the terms of the January 25th, 2011, Stock Award Agreement that had been executed by Mr. Sokota and disclosed in the 10-k, correct?

A. This represents discussion on June 6th that had been ongoing for the past couple of months on terms and conditions under which Mr. Jendras might leave the company.

Q. And what I'm asking you is: To the extent that this proposal reflected a modification in terms of the January 25th, 2011, award - more specifically, the forfeiture of any stock units that would have vested after December 31, 2011 - had that modification been presented to the Compensation Committee?

MR. PEIKES: Objection to the form.

That's not a modification at all. It's exactly consistent with what the January 25th, 2011, agreement --

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William LaPerch

MR. PEIKES: (Handing)

MR. WEINSTEIN: Thank you.

Q. I have it. All right. I want to direct your attention again to Paragraph 40, and the provision contained therein for the immediate vesting of unvested stock units.

Do you see that there?

A. 40?

Q. Right.

A. I see 40, yes.

Q. And that, you would agree, makes reference to a scenario whereupon any termination other than for cause, there would be an accelerated vesting of any unvested stock units, correct?

MR. PEIKES: Objection to the form.

MR. WEINSTEIN: Are you directing him not to answer that?

MR. PEIKES: Well, he can read it, himself. You're only reading half the sentence.

MR. WEINSTEIN: Could you read it back for him, please.

(Question read)

A. My view of 40 is exactly what I say:

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William LaPerch

2 "Upon termination of the participant's continuous
3 service by the company without cause or by the
4 employee for good reason, any unvested stock units
5 shall immediately vest."

Q. Okay. And so that if Mr. Jendras was
not terminated for cause, it would mean, under the
terms of this paragraph, that he would receive any
unvested stock units; correct?

MR. PERKES: Objection to the form.

A. That's my interpretation.

Q. Meaning, the answer to my question is,
yes?

A. I don't know what the answer to your
question is, but it's my interpretation.

Q. And in the normal course, if
Mr. Jendras elected voluntarily to leave the company
under the terms of the Stock Award Agreement, do you
have an understanding as to what would happen to any
unvested stock units?

A. The intent, from my understanding, is
that if he voluntarily would have left the company,
then unvested stock units would not go with him;
they would remain behind.

Q. And did you receive an attorney opinion

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William LaPerch

to that effect?

A. I read the -- that's my interpretation
of reading 40.

Q. Well, what I'm asking you: Is there an
opinion letter that was prepared that set forth an
interpretation of this document, consistent with
what you just said?

A. Not that I'm aware of.

Q. Did Mr. Sokota suggest to you that the
terms of this agreement, which you have in front of
you, and more specifically Paragraph 40, meant that
if Mr. Jendras elected to voluntarily leave the
company, he would lose any unvested stock units?

MR. PERKES: I'm going to object and
instruct you not answer on the basis of
attorney/client privilege.

MR. WEINSTEIN: So, your position is
Mr. Sokota's conversations relating to the
interpretation of this agreement, fall
within the attorney/client privilege?

MR. PERKES: If you're asking him
whether he consulted with Mr. Sokota,
seeking an interpretation of Section 4D
of the agreement, then I believe that would

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William LaPerch

be a privileged conversation.

MR. WEINSTEIN: That wasn't exactly my
question, but you've made your direction.

MR. PERKES: If you have a different
question, obviously, feel free to ask it.

Q. Let me ask it this way: Without giving
me the substance and substance of any opinion that
Mr. Sokota might've rendered, did you ask him to
provide an opinion at all relating to the meaning
of Paragraph 40?

A. As the general counsel, I asked him to
give me an opinion of the meaning of the entire
stock agreement.

Q. Well, my question is more specific:
Did you ask him to provide an opinion to you,
whether a voluntary separation by Mr. Jendras from
the company would be something that would not result
in an accelerated vesting of any unvested stock
units, as set forth in Paragraph 40 of the
January 25th, 2011, Stock Award Agreement?

MR. PERKES: Objection to the form.

A. We had discussions on what would happen
to the stock if Mr. Jendras voluntarily left the
company.

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William LaPerch

Q. And without disclosing the discussions,
did you ask Mr. Sokota to opine specifically on what
would happen if Mr. Jendras voluntarily left the
company?

A. Yes.

Q. And it's your belief, I gather, that
if he voluntarily separated, he would not be
entitled to any unvested stock at that point in
time; correct?

A. Yes.

Q. And Mr. Jendras, obviously, didn't
agree with that; correct?

A. I've seen correspondence today that
indicated that, yes. And I've -- I had
conversations with Mr. Oatta, who told me he didn't
agree with that, yes.

Q. Can you explain to me, if that was your
view, why you directed Mr. Sokota to change the
terms of the January 25th, 2011, stock award to
eliminate the verbiage set forth in Paragraph 40?

MR. PERKES: Objection to the form.

A. I don't understand the question.

Q. Can you explain to me why you
instructed Mr. Sokota to eliminate Paragraph 40 from

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William LaForte

Q. On January 23, 2011, does anyone

MR. PEIKES: Dependent on the facts.

A. The intent of the stock award was to —

was for retention purposes. It was designed to keep people around so they can continue to add value to our company for our shareholders. I didn't want to use, or think it was a good use of shareholder value to give away a bunch of stock for someone that was not going to be around the company for two years.

Q. And that decision was made after

Mr. Sanders refused to forgo the stock award if he chose to voluntarily resign from the company?

MR. PEIKES: Dependent on the facts.

A. That's ongoing management philosophy that I have.

Q. And it was made after, presumably, you

officially made a decision specifically related to Mr. Sanders and his departure from the company?

A. Once I became aware that Mr. Sanders was actively looking to get out of the company and collect all of that stock, yes.

MR. PEIKES: Can we go off the record

for a second?

(Off the record discussion)

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William LaForte

Q. exactly same point in time, is correct. You know,

he initially told Mr. Datta that he wanted that stock then he said, well, based on my contract, you can't get

me that. Then, he said, well, maybe I want that,

because I don't like the way Bill writes apparently

on me.

So, ongoing discussions. You know,

it's not a point-in-time answer.

Q. Now, you told me, first, second, third, that

you told me that Mr. Sanders refused to forgo the stock award?

A. I did.

Q. And Mr. Sanders' response was, yes or no?

A. He initially asked me if — do I want

him to.

Q. And what was your response?

A. I said, no.

Q. And Mr. Sanders never told me if

you that he was departing?

A. Not to me.

Q. And I gather you didn't know any

conversations and then subsequent to the time you

CONFIDENTIAL SOURCE/INFORMANT REPORTING

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William LaForte

Q. Now, did you become aware that

Mr. Sanders rejected the proposed transfer of the stock to Mr. Sanders dated January, June 23,

2011?

A. Is that the name to give Grimmer?

Q. No, that's —

MR. PEIKES: That's the one.

Q. (Speaking)

A. Oh sorry.

(Inaudible person speaking)

I'm not exactly sure of the date that I became aware of that, that Mr. Sanders rejected all of that.

Q. Did you ever discuss any of it with

anyone else?

A. Yes.

Q. Did you become aware of a discussion

on Mr. Sanders sending the stock on March 7?

I am not sure?

A. No.

There were ongoing discussions during the period March/April/May/June, where Mr. Sanders made three contracts and changed his views on a lot of things. And you know, to put a pin in any

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William LaForte

discussed that piece is the content of his contract

for 2011 is that correct?

A. We had limited interaction once the change to that — to Rajiv's role as CEO was put in place. And that was, you know, mostly the review sessions we had on March 7th.

Q. And Mr. Sanders never gave notice of

you or Mr. Sanders never gave notice that he was

leaving the company, is that correct?

A. That's correct.

Q. Now, at some point in time there was

a decision made to terminate Mr. Sanders' contract?

A. Correct.

Q. And at some point after that decision was made?

A. I don't know the exact date, no.

Q. Did you make that decision?

A. I was conferred with it and was not any

decision to make it was Rajiv's decision to make.

Q. After that the decision?

A. Rajiv.

Q. And when did he make it?

A. Don't know the date.

Q. Did he make it shortly before

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William LaPerch

Mr. Mendras was advised that he was terminated.

A. Yes -- as some of the documents we read today, you know, there was ongoing concern from Rajiv about Doug's willingness to fit in and to be a productive part of Rajiv's new organization. When you review that documentation, I think Rajiv lays out, pretty fairly, his views on the subject and things he would try and things he would expect. And so, it was -- you know, it was an ongoing discussion until it got to the point where Rajiv said, this isn't working. It's my decision that -- you know, that Doug is not performing his duties as required. He's not showing up for work. And I'd like to terminate him.

Q. When did he communicate that to you?

A. I don't know.

Q. Do you know whether it was, for example, in March of 2011?

A. It wasn't in March.

Q. Was it in April of 2011?

A. Not sure. No, it wasn't in April, either.

Q. Was it in May of 2011?

A. It could've been May; it could've been

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William LaPerch

Q. So, your best recollection is sometime after -- I'll show you what had been marked as Exhibit 49 -- after June 17th; is that correct?

A. I don't know.

Q. That would have been after the last date that I have in this chain of emails, where you made inquiry with Mr. Mendras regarding certain outages; correct?

A. That is the last date, yes.

Q. You don't know whether the decision was made before June 17th or not; is that correct?

A. I don't.

Q. Would you have continued to reach out to Mr. Mendras on operations issues after Mr. Datta told you that it was his intent to terminate him?

A. The nature of all those questions and emails that we reviewed are very case-specific. They require, you know, a couple of lines of response, with the exception of the pole attachment issue. They're just sort of ordinary emails I would send out to make sure that the customers are okay and the network's working. So, I sent it to the title, not the person.

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William LaPerch

June.

Q. So, it was before you sent the emails to Mr. Mendras, inquiring about Varlo's outages?

A. I don't recall all the dates on those outages.

Q. Do you want to look at them again? Would that help you?

MR. PERKES: My notes show between May 19th and June 17th, are the emails that you looked at.

MR. WEINSTEIN: I believe that's right.

A. Okay. So...?

Q. Had the decision by Mr. Datta been made to terminate Mr. Mendras before you made any of those inquiries with Mr. Mendras, mentioning these emails I had marked and asked you about?

THE WITNESS: Could you read back the question.

(Question read)

A. I can't be exactly sure of the date, but it is my best recollection that at that point that decision probably had not been made. We were -- there was still ongoing efforts to see if things could be worked out.

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William LaPerch

Q. You say you sent it to the title. You did address it to Mr. Mendras; did you not?

A. Right.

Q. And with regard to Mr. Datta's communication to you regarding his decision, did he give you a specific reason why he had concluded that he wished to terminate Mr. Mendras?

A. Yes. Because Mr. Mendras wasn't adhering to the agreement they had for showing up for work on days that Mr. Datta was in the office.

Q. And so, I gather from your testimony your understanding was, the basis for the termination was that he was violating the telecommuting agreement; is that correct?

A. He was violating the agreement that he had with his supervisor on being in White Plains and showing up for work.

Q. And do you know, in connection with that conclusion that Mr. Datta reached, whether he had ever indicated to Mr. Mendras at any point before he terminated him, that in his view, there was noncompliance with the terms of the telecommuting agreement?

A. Mr. Datta, in discussions, indicated

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William J. aPerch

2 that there was written correspondence that outlined
3 what the agreement would be, and he had spoken to
4 him once by phone to acknowledge that he wasn't in
5 compliance with this.

Q. He told you that there was a particular
7 phone conversation that took place after the
8 telecommuting agreement had been reached, in which
9 he advised Mr. Iendras that he was not in
10 compliance; is that correct?

A. He told me that there was a particular
12 time where he notified Mr. Iendras that he was not
13 in compliance. I'm not 100 percent sure if it was
14 telephonically, email, or how it was done.

Q. Did he tell you when he gave that
16 notification?

A. No.

Q. And you're not sure in what fashion he
19 gave that communication?

A. I'm not.

Q. Did you ever advise Mr. Iendras that
22 it was your view he was not in compliance with the
23 telecommuting agreement?

A. I didn't have a telecommuting agreement
25 with him.

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William J. aPerch

Q. I'm not asking whether you had a
3 telecommuting agreement. I'm asking whether you
4 ever advised Mr. Iendras, in sum and substance, that
5 he was in violation of the telecommuting agreement,
6 regardless of who you believed it was with?

A. No.

Q. And was Mr. Iendras ever informed,
8 to your knowledge, that he ran the risk of being
9 terminated unless he adhered to what Mr. Oatta
10 believed were the terms of the telecommuting
11 agreement?

A. I don't know.

Q. Do you know if Mr. Oatta, in this phone
15 conversation or whatever form of communication it
16 took, indicated to Mr. Iendras that, not only did he
17 believe Mr. Iendras was not in compliance; but that
18 if he did not comply in the future, that he would be
19 terminated?

A. I don't know.

Q. When Mr. Oatta informed you that he had
21 made this decision to terminate Mr. Iendras, did you
22 make any attempt to speak to Mr. Iendras?

A. No.

Q. I'm getting to show you a document that

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William J. aPerch

2 was marked at a prior deposition as Plaintiff's
3 Exhibit 41. (Holding)

Have you seen that letter before today?

(Witness peruses exhibit)

A. Can't recall.

Q. Did Mr. Oatta indicate to you, in
7 connection with the decision that was made to
8 terminate Mr. Iendras, that he was going to be
9 preparing a letter relating to that decision?

A. I was told that a letter would be
12 delivered to him, yes.

Q. And were you informed of that before
13 Mr. Oatta advised Mr. Iendras that he was being
14 terminated?

A. Yep.

Q. And did you see the letter in draft
17 before it was finalized?

A. No.

Q. And in connection with these
20 discussions that took place with Mr. Oatta regarding
21 the termination, was there ever any time where, as
22 part of that discussion, you or Mr. Oatta mentioned
23 the impact that it would have on Mr. Iendras' claim
24 for unvested shares that were identified in the

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William J. aPerch

2 January 25th, 2011, Stock Award Agreement?

THE WITNESS: Can you read that back.

(Question read)

A. We knew that if he was terminated with
8 cause, that he would not get those options in the
9 future.

Q. And did that enter into the decision
8 that was made to notify Mr. Iendras that it was the
9 view of the company that he was terminated
10 immediately, effectively, for cause?

A. I don't understand the question.

Q. I'll rephrase it.

That discussion that took place
14 regarding the impact of the termination that
15 Mr. Oatta indicated he had decided was appropriate,
16 you've indicated that there was also a discussion
17 regarding the impact that would have on Mr. Iendras'
18 claim of entitlement to the stock that was to be
19 awarded to him under the terms of the
20 January 25th, 2011, Stock Award Agreement;
21 correct?

A. Correct.

Q. And was it relevant to the decision
24 that was made to terminate him, the notion that

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William LaPerch

07:05:47 2 If the company could substantiate that it had a
 07:06:16 3 termination for cause, that it would, in fact, be
 07:06:45 4 a basis to deprive Mr. Jendras of any unvested stock
 07:06:54 5 as of the time of termination.
 07:06:54 6 MR. PERKES: Objection to the form.
 07:06:57 7 A. We knew that was a consequence of his
 07:06:57 8 termination. The stock program was designed to
 07:06:58 9 retain and to provide value for people who were
 07:06:58 10 going to stay with the company and provide long-term
 07:06:58 11 value. The board was happy to give it out. It was
 07:06:58 12 a great tool to ensure that people were rewarded for
 07:06:58 13 their success. So, it wasn't as if we made a
 07:06:58 14 decision
 07:06:58 15 with the idea that we would save stock or get stock
 07:06:58 16 back. We made a decision because Mr. Jendras was
 07:06:58 17 not showing up for work and that -- and he was
 07:06:58 18 terminated for that reason.
 07:06:58 19 Q. In your conversations with Mr. Datta
 07:06:58 20 relating to this termination, did you at any time
 07:06:58 21 encourage him to come to this conclusion?
 07:06:58 22 A. We had full discussions about what was
 07:06:58 23 the impact of this.
 07:06:58 24 As you may know, I've known Mr. Jendras
 07:06:58 25 for quite a long time. We've considered ourselves

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William LaPerch

07:06:58 2 friend for quite a long time.
 07:06:58 3 When I gave Raju the COO role, I gave
 07:06:58 4 him the authority to build an organization that
 07:06:58 5 would work very well and be successful; and
 07:06:58 6 consequently,
 07:06:58 7 I had to give him the authority to make decisions
 07:06:58 8 like that.
 07:06:58 9 Q. And did you view the decision, as
 07:06:58 10 Mr. Datta shared it with you, to have a favorable
 07:06:58 11 impact because of the position that you felt the
 07:06:58 12 company could take with regard to the unvested
 07:06:58 13 stock set forth and identified in Mr. Jendras's
 07:06:58 14 January 25th, 2011, Stock Award Agreement?
 07:06:58 15 A. Can you restate the question.
 07:06:58 16 MR. WEINSTEIN: Can you read it back,
 07:06:58 17 please.
 07:06:58 18 A. I don't understand. I mean, you can
 07:06:58 19 read it back, but I don't understand the question.
 07:06:58 20 Q. Let her read it back, and we'll take it
 07:06:58 21 from there.
 07:06:58 22 A. Okay.
 07:06:58 23 (Question read)
 07:06:58 24 MR. PERKES: I'm going to object to the
 07:06:58 25 form, because I don't understand it, either.

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William LaPerch

07:07:14 2 MR. WEINSTEIN: Okay.
 07:07:43 3 Q. Can you answer that?
 07:07:44 4 A. I don't understand it. Sorry.
 07:07:44 5 Q. I'll rephrase it.
 07:07:51 6 Did you find that Mr. Datta's
 07:07:51 7 decision had some appeal to you, because it
 07:07:51 8 would provide the company with an argument that
 07:07:51 9 would preclude Mr. Jendras from claiming any
 07:07:51 10 right to any unvested shares of stock set forth
 07:07:51 11 in the January 25th, 2011, Stock Award Agreement?
 07:07:51 12 A. What happened to Mr. Jendras' stock
 07:07:51 13 agreement -- or stock awards, was a consequence of
 07:07:51 14 his actions. We didn't do this with the thought of
 07:07:51 15 saving stock or looking good, you know, for --
 07:07:51 16 looking good in any form or fashion. We much rather
 07:07:51 17 would've had a productive employee, who was at work
 07:07:51 18 every day, doing his part and earning those shares.
 07:07:51 19 Q. But you did discuss this prior to the
 07:07:51 20 decision being made to terminate him; is that
 07:07:51 21 correct?
 07:07:51 22 A. I knew what would happen to the stock.
 07:07:51 23 MR. WEINSTEIN: Okay. Just give
 07:07:51 24 me a moment. I'm going to have a brief chat
 07:07:51 25 with my client.

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William LaPerch

07:08:56 2 (Recess held from 5:05 to 5:09 p.m.)
 07:12:57 3 CONTINUED EXAMINATION BY MR. WEINSTEIN:
 07:12:58 4 Q. Mr. LaPerch, have you had any
 07:12:58 5 conversations with employees of AbodeNet regarding
 07:12:58 6 the circumstances of Mr. Jendras' termination?
 07:12:58 7 A. Yes.
 07:12:58 8 Q. Have you indicated to one or more
 07:12:58 9 individuals that Mr. Jendras quit?
 07:12:58 10 A. No.
 07:12:58 11 MR. WEINSTEIN: Thank you. I have no
 07:12:58 12 further questions.
 07:12:58 13 MR. PERKES: Okay. Thanks.
 07:12:58 14 pgo
 07:12:58 15 (Time noted: 5:10 p.m.)
 07:12:58 16
 07:12:58 17
 07:12:58 18
 07:12:58 19
 07:12:58 20
 07:12:58 21
 07:12:58 22
 07:12:58 23
 07:12:58 24
 07:12:58 25

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t
1 STATE OF NEW YORK
1
4 COUNTY OF WESTCHESTER
5
6
7
8 t, WILLIAM LAPERCHE, the witness
9 herein, having read the foregoing testimony of
10 the deponent of this deposition, do hereby certify
11 it to be a true and correct transcript, subject
12 to the corrections, if any, shown on the
13 attached page.

000

WILLIAM LAPERCHE

22 Subscribed and sworn to before me
23 this _____ day of _____, 2012.

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1
2 STATE OF NEW YORK
1
4 COUNTY OF RICHMOND
5
6
7 t, Donna Bochic, Notary Public within
8 and for the State of New York, do hereby
9 certify:

10 that I reported the proceedings in the
11 within entitled matter, and that the within
12 transcript is a true record of said
13 proceedings.

14 I further certify that I am not
15 related to any of the parties to the action by
16 blood or marriage, and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto
19 set my hand this 11th day of April, 2012.

24 DONNA BOCHIC,
25 Notary Public

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t
2 ***NOTICE***
3
4 EXAMINATION BY
5 Mr. Weinstein 4 10
6
7 DOCUMENT/DATA REQUEST:
8 Production of any spreadsheets that
9 were presented at said meeting,
10 where any stock awards were the
11 subject of discussion and/or
12 approval as it pertained to
13 Mr. Fendras 85 17
14
15 Production of spreadsheets that
16 indicate Mr. Laparch's approved
17 recommendations 91 10
18
19 Production of document with regard
20 to the telecommuting agreement with
21 Eliza Thomas 118 31
22
23 Production of the list with regard
24 to those individuals who have
25 approved telecommunication arrangements
26 for the year 2011 111 3
27
28 PLAINTIFF'S EXHIBITS:
29 43 - hmvnet, inc. 2011 Annual
30 Report Pursuant to
31 System 11 and 1510 filed
32 on 3/01/2011, filed period
33 1/11/2010 104 1
34
35 44 - email chain 114 17
36
37 45 - three-page email chain Bates
38 stamped P00089 - 91 116 10
39
40 Index continued on next page

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1
2 Plaintiff's Exhibits: (Continued)
3
4 46 - two-page email chain Bates
5 stamped P000094 - 91 114 18
6
7 47 - email chain Bates stamped
8 P000096 - 104 116 16
9
10 48 - email chain Bates stamped
11 P000405 - 108 118 13
12
13 49 - three-page email chain
14 Bates stamped P000109 - 111 250 18
15
16 50 - four-page email chain Bates
17 stamped P00084 - 84 114 16

DEFT.'S EXHIBITS:

NONE

BAILINGS CONVEYANCE:

NONE

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CORRECTION SHEET

Re: Douglas Jendras v. AboveNet.

The following corrections, additions
or deletions were noted on the transcript of
the testimony which I gave in the above-
captioned matter, held on April 2, 2012.

PAGE(S) LINE(S) SHOULD READ

11	*	*	
12	*	*	
13	*	*	
14	*	*	
16	*	*	
18	*	*	
17	*	*	
18	*	*	

Subscribed and sworn to before me
this ____ day of ____ 2012.

COMPU-TRAN SHORTHAND REPORTING

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\$1B,00d [1] - 59:2t
 \$12,890 [2] - 43:20, 44:t6
 \$14,895 [1] - 49:t3
 \$18,865 [1] - 55:4
 \$236,950 [2] - 39:14, 43:2t
 \$248,250 [1] - 49:t4
 \$256 [1] - 236:5
 \$290,000 [1] - t66:t4
 \$295,800 [1] - t66:t4
 \$38,400 [1] - 235:t9
 \$5.00 [3] - 81:t7, 86:7,
 86:17

'03 [3] - 1t:25, 28:2t
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